

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cause No. 1:18CR98 SNLJ

BARRETT C. SWAN,

Defendant.

=====

TRIAL DAY 1 OF 2  
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BEFORE THE HONORABLE STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE

JULY 8, 2019

=====

APPEARANCES

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1 (THE FOLLOWING PROCEEDINGS WERE HELD  
2 IN OPEN COURT AND WITH THE DEFENDANT PRESENT:)

3 (THE PROCEEDINGS BEGAN AT 9:10 A.M.)  
4

5 T R I A L  
6

7 The trial began on Monday the 8th day of  
8 July, 2019, and concluded on Tuesday the 9th day  
9 of July, 2019, before the Honorable Stephen N.  
10 Limbaugh, United States District Judge, of the  
11 Eastern District of Missouri, Southeastern  
12 Division, before a jury and one alternate juror,  
13 who were impaneled, selected and sworn.

14 THE COURT: Good morning.

15 MR. SORRELL: Good morning.

16 MS. BOOTH: Good morning.

17 THE COURT: This case is the United  
18 States of America versus Barrett C. Swan. The  
19 Case Number is 18-CR-098.

20 The Government is present by  
21 Assistant United States Attorney Keith Sorrell  
22 and Assistant United States Attorney Angel  
23 Woodruff.

24 The Defendant is present by counsel  
25 Jennifer Booth and Scott Tilsen.

1                   You are Barrett Swan; is that right?

2                   THE DEFENDANT: Yes, sir.

3                   THE COURT: This matter is set today  
4 for a jury trial. And so we'll have a pretrial  
5 conference at this time.

6                   MR. SORRELL: Yes, Your Honor.

7                   THE COURT: The first matter is the  
8 Government's filing this week of a notice of  
9 intent to rely on 404(b) evidence pertaining to  
10 the previous conviction of the felony offense,  
11 and in particular the -- it's a firearm offense.

12                  MR. SORRELL: Yes. Yes, Your Honor.

13                  THE COURT: So is there any  
14 objection to that?

15                  MS. BOOTH: No, sir, there is not.  
16 And prior to that exhibit being given to the jury  
17 Mr. Sorrell and I know we need to use a little  
18 bit of whiteout to address a few things, but --

19                  THE COURT: A redaction, you mean?

20                  MS. BOOTH: Yes, sir.

21                  THE COURT: Okay.

22                  MR. SORRELL: There's been a  
23 reference to other counts of conviction in the  
24 judgment, and we're going to take that out.

25                  THE COURT: Right. That was all set

1 out in your notice.

2 MR. SORRELL: Right.

3 THE COURT: Okay. So the next thing  
4 is the Government's motion in limine for  
5 determination of admissibility of impeaching  
6 information.

7 I'll allow you to address that, but  
8 I think that the motion is well taken. Do you  
9 intend to try to impeach on the DWI offense or  
10 whatever it was?

11 MS. BOOTH: No, Your Honor.

12 THE COURT: So there's no objection  
13 then to that motion in limine?

14 MS. BOOTH: Correct.

15 THE COURT: That's granted as well  
16 then.

17 Any other pretrial matters for the  
18 Government?

19 MR. SORRELL: No, Your Honor. Thank  
20 you.

21 THE COURT: Is the Government ready  
22 for trial?

23 MR. SORRELL: Yes, sir.

24 THE COURT: One thing I would like,  
25 though, for purposes of voir dire if you have a

1 witness list so that I can ask the jury if they  
2 know any of the witnesses.

3 MR. SORRELL: Oh, yes, I believe so,  
4 Judge. Yes.

5 THE COURT: Are there any pretrial  
6 matters for Defendant? And before you go into  
7 that I do note that you have a request for voir  
8 dire questions to ask about racial animus. I'm  
9 not going to ask that, but I'll allow you to ask  
10 that question.

11 MS. BOOTH: Yes, sir.

12 THE COURT: Any other pretrial  
13 matters then?

14 MS. BOOTH: Judge, would it be all  
15 right if my paralegal assistant Julie Dyer sat --

16 THE COURT: Yes.

17 MS. BOOTH: -- at the table during  
18 the voir dire process?

19 THE COURT: Yes.

20 MS. BOOTH: Thank you.

21 THE COURT: Any other pretrial  
22 matters for Defendant then?

23 MS. BOOTH: Sir, we have stipulated  
24 testimony, but that's something we can take up  
25 later. I don't think that's something we have to



1 take up now.

2 THE COURT: Okay.

3 MS. BOOTH: Or we can.

4 MR. SORRELL: We have certain  
5 agreements, Your Honor, for stipulated testimony  
6 of the exhibits basically for each side we've  
7 already agreed that may be admitted. So we've  
8 tried to streamline this process as much as  
9 possible, but we can take those matters up if  
10 there's any question. But we've already tried to  
11 reduce the amount of foundation questions that  
12 would be asked by each side.

13 THE COURT: All right. Let's do  
14 this, too, then when we have our jury selection,  
15 why don't you introduce who's sitting with you at  
16 the counsel table. Same with you, if you can  
17 identify your paralegal.

18 MR. SORRELL: Yes, sir.

19 THE COURT: So is the Defendant  
20 ready for trial? I think I asked that before.

21 MS. BOOTH: Yes, sir. If you'll  
22 give me one moment.

23 THE COURT: Sure.

24 MS. BOOTH: I want to -- yes, sir,  
25 we're ready.

1 THE COURT: Okay. I think that's  
2 all I need then. So unless there's any other  
3 matters that need to be brought to the Court's  
4 attention, we'll ask the jury to come in, and  
5 we'll be in recess until then.

6 MR. SORRELL: Thank you.

7 THE COURT: Okay. Thank you.

8 (Proceedings stood in temporary  
9 recess.)

10 (Proceedings resumed in open court.)

11 THE COURT: Good morning, ladies and  
12 gentlemen. My name is Steve Limbaugh, Junior.  
13 I'm the resident United States District Judge  
14 here in Cape Girardeau.

15 I welcome you to your United States  
16 courthouse. The courthouse is now 11 years old,  
17 but it is still one of the most high tech state  
18 of the art courthouses in the world. We're very  
19 fortunate to have this facility here in Cape  
20 Girardeau. Otherwise, you'd have to go to  
21 St. Louis for your jury service, and all the  
22 litigants and the witnesses and everybody  
23 involved in the case would have to go up there  
24 too.

25 So in any event, during recesses

1     there is a judicial history room just off the  
2     entrance that you might be interested in. The  
3     courthouse here is something that I hope you'll  
4     visit under other circumstances, one of which is  
5     naturalization ceremonies that we have at least  
6     once a year. If you've never seen a  
7     naturalization ceremony, it's a very inspiring,  
8     uplifting experience, and we have that down in  
9     the atrium.

10                     But, anyway, I hope you'll make  
11     yourself at home down in the public areas and the  
12     jury assembly room and the judicial history room.

13                     (Instructions Read to the Venire  
14     Panel.)

15                     THE COURT: With that, we are about  
16     to begin the trial of a criminal case. This is a  
17     prosecution brought by the United States  
18     Government against the Defendant Barrett Swan.

19                     We will begin with jury selection.  
20     And during this part of the trial, I will ask you  
21     some questions, and the attorneys will ask you  
22     some questions for the purpose of determining  
23     whether any of you has any knowledge of the case  
24     or the people involved in it and whether you have  
25     any feelings about the issues involved in the

1 case that would make it difficult for you to give  
2 both sides a fair trial.

3 Our questions will initially be  
4 directed to you as a group, but we will also ask  
5 questions of you individually. We're not trying  
6 to embarrass you or invade your privacy by asking  
7 these questions. They're necessary, though, to  
8 determine whether or not you would listen to the  
9 evidence impartially, follow the law and be fair  
10 to both sides.

11 If you feel uncomfortable answering  
12 a question in front of the group, let me know  
13 that, and you can come up to the bench off to the  
14 side here and give your answer later.

15 Please understand that you are not  
16 permitted to withhold information that is asked  
17 of you. So the first order of business then is  
18 for you to take an oath promising to give true  
19 and complete answers to our questions, and you  
20 must live up to that oath. So please rise now  
21 and be sworn in by the Court Clerk.

22 (Venire panel sworn and instructions  
23 read.)

24 THE COURT: Please be seated.

25 In front of me is our court reporter

1 who is recording everything that is said during  
2 these proceedings. So to make sure that we have  
3 an accurate record I must ask you, first, please  
4 give your name and badge number when you're  
5 answering a question. And, second, speak loudly  
6 and clearly so that everyone can hear you.

7 You will not be allowed to leave the  
8 courtroom until we take a recess, but if you need  
9 to leave sooner than that, let me know, and I'll  
10 try to accommodate you.

11 My first question then is whether  
12 any of you have a vision or a hearing problem or  
13 some other physical or mental condition that  
14 might affect your service on the jury. Anybody  
15 have any problem like that?

16 VENIREPERSON 12: I have a problem.

17 THE COURT: Okay. Juror Number 12.

18 VENIREPERSON 12: Wilma Berger. I  
19 have problems with my eyes. I have an eye doctor  
20 appointment tomorrow.

21 THE COURT: Okay. I'll make a note  
22 of that. You can see the witness stand and the  
23 witnesses here, I suppose, can't you?

24 VENIREPERSON 12: Yes.

25 THE COURT: And the lawyers would be

1 up at the podium.

2 VENIREPERSON 12: Yes.

3 THE COURT: So you should be okay  
4 I'm thinking?

5 VENIREPERSON 12: Yes, I think so.

6 THE COURT: All right. Thank you.  
7 But I'll make note of that anyway.

8 Someone else? Yes, Juror Number 4.

9 VENIREPERSON 4: Juror Number 4.

10 THE COURT: You may be seated. The  
11 people in the back gallery, I'll need you to  
12 stand, but you-all here who are in front don't  
13 need to stand unless we can't hear you otherwise.

14 VENIREPERSON 4: My name is James  
15 Rickus. I'm legally blind in my left eye.

16 THE COURT: Okay. Do you think  
17 that's going to affect your service, though?

18 VENIREPERSON 4: I don't think so,  
19 sir.

20 THE COURT: Okay. Anyone else?

21 (No Response.)

22 THE COURT: The trial is expected to  
23 last two days. So knowing that, does anyone have  
24 any serious and overriding personal situations or  
25 commitments at home or at work or otherwise that

1 might prevent you from giving your undivided  
2 attention to the proceedings, such as a child  
3 who's very ill or a doctor's appointment that  
4 cannot be rescheduled?

5 And I'll make a note of your eye  
6 doctor's appointment then.

7 So anyone else, knowing now that we  
8 have a two-day trial?

9 And Juror Number 11.

10 VENIREPERSON 11: Megan Stafford. I  
11 have no child care tomorrow for my baby.

12 THE COURT: Is there a way you can  
13 make other arrangements?

14 VENIREPERSON 11: I've tried.

15 THE COURT: Okay. I'll make a note,  
16 but --

17 Anyone else? Juror Number 24.

18 VENIREPERSON 24: 24, Kelly Minghi.  
19 I do have child care today but not tomorrow for  
20 my two young children, and I'm also supposed to  
21 appear in court with a friend tomorrow for an  
22 adoption hearing.

23 THE COURT: Okay. I'll make a note  
24 of that too.

25 Anyone else?

1 (No Response.)

2 THE COURT: The Defendant has been  
3 charged in a document that is called an  
4 indictment. The indictment is just an  
5 accusation. It is not proof of anything.

6 In this case the Defendant, Barrett  
7 Swan, is charged with being a felon in possession  
8 of a firearm. This incident is alleged to have  
9 occurred on May 26th of last year in Cape  
10 Girardeau County.

11 So with that information has any one  
12 of you heard or read anything about this case?

13 I see no hands.

14 Does any member of the panel know  
15 the attorneys for the Government? And I'll  
16 introduce them now. It's Assistant United States  
17 Attorney Keith Sorrell and Assistant United  
18 States Attorney Angel Woodruff. Any of you know  
19 either Mr. Sorrell or Ms. Woodruff?

20 You may be seated.

21 MR. SORRELL: Judge.

22 THE COURT: Oh, I'm sorry. In the  
23 back.

24 VENIREPERSON 40: I know Mr. -- Tony  
25 Chilton, Juror Number 40. I know Mr. Sorrell.



1 His daughter is married to my cousin.

2 THE COURT: Say that again?

3 MR. SORRELL: His daughter is  
4 married to my cousin.

5 THE COURT: Okay. Do you know him  
6 personally, though?

7 VENIREPERSON 40: Not personally,  
8 no.

9 THE COURT: So you don't even have  
10 an acquaintance really with him?

11 VENIREPERSON 40: I know who he is.

12 THE COURT: Okay. Well, let me ask  
13 you this, though. Do you think that you can set  
14 aside your knowledge of Mr. Sorrell and be  
15 absolutely fair both to the Defendant and to the  
16 Government?

17 VENIREPERSON 40: Yes, sir.

18 THE COURT: You're certain about  
19 that?

20 VENIREPERSON 40: Yes, pretty  
21 certain.

22 THE COURT: Well --

23 VENIREPERSON 40: As certain as I  
24 can be.

25 THE COURT: Okay. That's fine.

1 Thank you.

2 Anybody else know any of the other  
3 two lawyers?

4 Mr. Sorrell, do you want to  
5 introduce the other gentlemen at your table?

6 MR. SORRELL: Yes, sir. It's Brian  
7 Eggers who's a task force officer with the Bureau  
8 of Alcohol, Tobacco and Firearms.

9 THE COURT: Anybody know this  
10 gentleman then?

11 (No Response.)

12 THE COURT: Let me go through the  
13 other people who are in the United States  
14 Attorney's Office here in Cape Girardeau. Paul  
15 Hahn is another one. Tim Willis. Jack Koester.  
16 Any of you know any of those other lawyers who  
17 are Assistant United States Attorneys in the Cape  
18 Girardeau office?

19 I see no hands.

20 Does anybody know anybody associated  
21 or affiliated with the United States Attorney's  
22 Office here in Cape Girardeau?

23

24 (No Response.)

25 THE COURT: Does anybody know any

1 Assistant United States Attorneys anywhere? I'll  
2 ask it that way then.

3 I see no -- I see no hands.

4 All right. Now, representing the  
5 Defendant is Jennifer Booth and Scott Tilsen.  
6 Would you both stand. They're both lawyers in  
7 Cape Girardeau. And I'll ask for your client to  
8 stand, Mr. Barrett Swan.

9 Do any of you know either Ms. Booth,  
10 Mr. Swan or Mr. Tilsen?

11 (No Response.)

12 THE COURT: All right. You may be  
13 seated then.

14 And I believe your paralegal is  
15 going to sit with you as well?

16 MS. BOOTH: Yes, Your Honor. My  
17 paralegal, her name is Julie Dyer.

18 THE COURT: Any of you know any of  
19 these people then?

20 All right. I see no hands.

21 I'm going to go through a list of  
22 persons who might possibly be called as witnesses  
23 in the case to see if any of you know any of  
24 these persons.

25 First is Patrolman Kyle Evans,

1 Sergeant Rodney Edwards, Patrolman Gabriel Yoder,  
2 Corporal Brett Hellmann, Steven Fowler, Patrolman  
3 Jonathan Kemp, Christy Pennington. And I've also  
4 already asked you about Officer Brian Eggers at  
5 the table.

6 Any of you know any of those people?

7 (No Response.)

8 THE COURT: I'll keep going then.  
9 Ebony Stigall. Shavion. Is that the right  
10 pronunciation?

11 MS. BOOTH: Yes, sir.

12 THE COURT: Shavion Reed or Tiara  
13 Thorpe. Anybody know any of those persons?

14 I see no hands then.

15 The Defendant has been accused of  
16 committing a crime, but the accusation is not  
17 proof that he is guilty. Is there anyone who  
18 does not understand that concept?

19 (No Response.)

20 THE COURT: Let me ask you this:  
21 Does anyone have an opinion at this point about  
22 whether the Defendant is guilty or not guilty?  
23 Anyone have an opinion about that?

24 (No Response.)

25 THE COURT: Because you should not

1 have an opinion.

2 Next, I will instruct you that under  
3 the law the Government is required to prove the  
4 Defendant's guilt beyond a reasonable doubt. Is  
5 there anyone who would not follow that  
6 instruction?

7 Again, I see no hands.

8 I will also instruct you that under  
9 the law the Defendant is not required to prove  
10 that he is innocent. Instead he is presumed  
11 innocent. And as such he is not required to  
12 testify or call any witnesses.

13 Is there anyone who would not follow  
14 that instruction?

15 Again, I see no hands.

16 I will also instruct you that the  
17 Defendant has a right not to testify. And if the  
18 Defendant decides not to testify, you may not  
19 make any adverse inference about his failure to  
20 testify. In other words, you cannot hold that  
21 against him.

22 Is there anyone who would not follow  
23 that instruction?

24 I see no hands.

25 Next, is there anyone who cannot for

1 whatever reason follow all these instructions  
2 that I've read to you and all the other  
3 instructions that I'll give to you? Anyone who  
4 cannot follow these instructions?

5 (No Response.)

6 THE COURT: But let me ask a harder  
7 question. Will each of you follow the Court's  
8 instructions whether you agree with them or not?  
9 And with that I would hope I would see all hands.

10 All right. Thank you. Anybody  
11 disagree with that proposition?

12 (No Response.)

13 THE COURT: Do any of you hold any  
14 opinion or belief that might keep you from being  
15 a fair and impartial juror in this case?

16 Again, I see no hands.

17 Do any of you have any religious,  
18 moral or ethical beliefs that would prevent you  
19 from serving on the jury and making a decision in  
20 this case that would prevent you, in other words,  
21 from sitting in judgment on another person?

22 I see no hands again.

23 And with that counsel for the  
24 Government may inquire.

25 MR. SORRELL: Thank you.

1 Government's Voir Dire Examination by Mr. Sorrell

2 MR. SORRELL: Counsel. Ladies and  
3 gentlemen, my name is Keith Sorrell, and I work  
4 on for the United States of America with the  
5 Department of Justice or the Attorney General's  
6 Office.

7 You're all qualified to be jurors in  
8 this particular case, but there may be reasons  
9 why you shouldn't be a juror in this particular  
10 case. So I'll ask a few questions, if I may,  
11 about your background and anything that might  
12 come up.

13 For example, the statutes of the  
14 United States make it a crime for a person who's  
15 been previously convicted of a felony -- that is  
16 a crime punishable by a term of imprisonment that  
17 could exceed one year. It makes it a crime for  
18 that person to possess a firearm. Does anybody  
19 disagree that that ought to be a crime or have a  
20 strong feeling one way or the other about whether  
21 that that ought to be a crime punishable by the  
22 United States?

23 I see no hands.

24 This case will proceed in two  
25 counts. Mr. Swan is charged with two different

1 possessions of two different guns at two  
2 different times. The first event occurred in  
3 Cape Girardeau, Missouri. The second event  
4 occurred in Florissant, Missouri, but that will  
5 be considered by you here today.

6 Now, does everybody understand you  
7 should consider those two events completely  
8 separately in terms of deciding whether a person  
9 is -- Mr. Swan is guilty or not guilty? That is,  
10 you shouldn't use your finding on one count to  
11 determine your finding on the other count. Does  
12 that make sense?

13 (No Response.)

14 MR. SORRELL: Would anybody be  
15 unable to do so?

16 (No Response.)

17 MR. SORRELL: Does everybody  
18 understand that you're to treat every witness the  
19 same in terms of how you view them? That is,  
20 whether they're wearing a uniform of a police  
21 officer or they're just a citizen that they're  
22 all to be treated exactly the same by you. That  
23 I would suggest is that they start out with no  
24 finding of credibility by the jury, that you  
25 start out just simply deciding what you're going



1 to hear from each witness.

2 Will everyone agree to do that? And  
3 is there anyone here who can't do that?

4 (No Response.)

5 MR. SORRELL: That is, we want you  
6 to treat each and every witness exactly the same  
7 regardless of their status, regardless of their  
8 occupation. If there is anyone who will not do  
9 that, please let me know.

10 (No Response.)

11 MR. SORRELL: And is there anyone  
12 here who's had a bad experience with a police  
13 officer, someone who's had some sort of event  
14 that occurred that they thought they were treated  
15 unfairly, whether it be a traffic stop, a  
16 conversation on the side of the highway, or  
17 anything like that? Anyone who feels like  
18 they've been unfairly picked out or unfairly  
19 maligned by an officer?

20 I don't see any hands.

21 Is there anyone on the panel who has  
22 been arrested for a felony offense, not  
23 necessarily convicted, but just arrested?

24 This one may get a few more answers.

25 THE COURT: There's a --

1 MR. SORRELL: Oh, I'm sorry. Juror  
2 Number 22, Troy Fiedler; is that right?

3 VENIREPERSON 22: Fiedler.

4 MR. SORRELL: Fiedler? Would you  
5 stand up, please, so the court reporter -- and so  
6 you were arrested for a felony offense?

7 VENIREPERSON 22: Yes.

8 MR. SORRELL: And what offense was  
9 that?

10 VENIREPERSON 22: Domestic assault.

11 MR. SORRELL: Was that recently?

12 VENIREPERSON 22: 2012.

13 MR. SORRELL: Okay. So that case  
14 has been resolved at this time?

15 VENIREPERSON 22: Uh-huh.

16 MR. SORRELL: Do you believe you  
17 were treated fairly by the court system regarding  
18 your arrest for that offense?

19 VENIREPERSON 22: Not from the State  
20 attorney, no.

21 MR. SORRELL: Okay. What county was  
22 that in?

23 VENIREPERSON 22: Scott.

24 MR. SORRELL: Scott. And that was  
25 in 2012?

1 VENIREPERSON 22: Uh-huh.

2 MR. SORRELL: Okay. All right. Is  
3 there anything about that experience that will  
4 cause you a problem hearing the evidence in this  
5 case?

6 VENIREPERSON 22: No.

7 MR. SORRELL: You're shaking your  
8 head no; is that right?

9 VENIREPERSON 22: Yes, sir.

10 MR. SORRELL: Okay. Thank you. I  
11 don't have any other questions.

12 Thank you, Judge.

13 Are there any other members of the  
14 panel who have been arrested for a felony  
15 offense?

16 (No Response.)

17 MR. SORRELL: Is there anyone on the  
18 panel who's had a close family member arrested or  
19 convicted of a felony offense?

20 And by a close family member what  
21 I'm looking for or what I'm defining that as is a  
22 father, a mother, a daughter, a son, a brother, a  
23 sister or an aunt or an uncle.

24 Anybody first in the jury pool, no  
25 one here has had a relative arrested for a felony

1 offense?

2 Then not on the first row but the  
3 second row we have some.

4 Let me start with Juror Number 24.

5 THE COURT: Just a second. There is  
6 one hand.

7 MR. SORRELL: Oh, I'm sorry. I'm  
8 sorry. Juror Number 2, and what family member,  
9 please?

10 VENIREPERSON 2: My son.

11 MR. SORRELL: And what was he  
12 arrested for?

13 VENIREPERSON 2: Drugs.

14 MR. SORRELL: Drugs. And was that  
15 in federal court or state court?

16 VENIREPERSON 2: State court.

17 MR. SORRELL: Okay. How long ago?

18 VENIREPERSON 2: About five years  
19 ago.

20 MR. SORRELL: Okay. Has his case  
21 resolved?

22 VENIREPERSON 2: Yes.

23 MR. SORRELL: And do you believe  
24 that your son was treated fairly by the criminal  
25 justice system?

1 VENIREPERSON 2: I believe he was.

2 MR. SORRELL: Okay. And I take it  
3 that was resolved to your satisfaction?

4 VENIREPERSON 2: It was resolved.

5 MR. SORRELL: Okay. All right.

6 Would that event affect your ability to hear  
7 evidence in this case?

8 VENIREPERSON 2: No.

9 MR. SORRELL: Okay. Thank you very  
10 much.

11 All right. Juror Number 24, I  
12 believe you're the next number. Is that Kelly  
13 Minghi?

14 VENIREPERSON 24: Yes.

15 MR. SORRELL: And what family member  
16 do you have that was arrested?

17 VENIREPERSON 24: I had an uncle.  
18 He's since deceased, though.

19 MR. SORRELL: I'm sorry?

20 VENIREPERSON 24: He's since  
21 deceased, but it was an uncle.

22 MR. SORRELL: And what was his  
23 offense?

24 VENIREPERSON 24: Manslaughter.

25 MR. SORRELL: What county?

1                   VENIREPERSON 24: It was in  
2 St. Charles County.

3                   MR. SORRELL: St. Charles. And do  
4 you believe he was treated fairly by the criminal  
5 justice system?

6                   VENIREPERSON 24: Yes.

7                   MR. SORRELL: And would anything  
8 about that event cause you any problems in  
9 hearing evidence and reaching a verdict in this  
10 case?

11                  VENIREPERSON 24: No.

12                  MR. SORRELL: Okay. Thank you.

13                  Juror Number 19, would you stand up  
14 please.

15                  VENIREPERSON 19: My son.

16                  MR. SORRELL: Okay. And what was  
17 your son arrested for?

18                  VENIREPERSON 19: Property damage I  
19 think it was.

20                  MR. SORRELL: Okay. What county?

21                  VENIREPERSON 19: Cape.

22                  MR. SORRELL: And has his case been  
23 resolved?

24                  VENIREPERSON 19: Yes.

25                  MR. SORRELL: How long ago was that?

1                   VENIREPERSON 19: It's been about 10  
2 years ago.

3                   MR. SORRELL: Would that event cause  
4 you any problems in hearing evidence in this case  
5 and coming to a verdict?

6                   VENIREPERSON 19: No.

7                   MR. SORRELL: Okay. Thank you.  
8 Then the next row, Number 29; is  
9 that right?

10                  VENIREPERSON 29: My son. Wayne  
11 Montgomery.

12                  MR. SORRELL: Okay.

13                  VENIREPERSON 29: As far as this  
14 matter as far as state, because I didn't think  
15 about it until I raised my hand, it was in  
16 Louisiana.

17                  MR. SORRELL: Oh, no, that's fine.  
18 And what relative was it again?

19                  VENIREPERSON 29: My son.

20                  MR. SORRELL: And what was the  
21 offense?

22                  VENIREPERSON 29: Second degree  
23 assault.

24                  MR. SORRELL: Okay. And that was in  
25 Indiana?

1 VENIREPERSON 29: No, Louisiana.

2 MR. SORRELL: Louisiana. I'm sorry.  
3 And was -- is his case resolved?

4 VENIREPERSON 29: Oh, yeah.

5 MR. SORRELL: And how long ago was  
6 that?

7 VENIREPERSON 29: A year ago.

8 MR. SORRELL: And would anything  
9 about that event affect your ability to hear  
10 evidence and come to a just verdict in this case?

11 VENIREPERSON 29: No.

12 MR. SORRELL: Okay. Thank you.  
13 Anyone else in the last row?

14 Yes, sir, Juror Number 31.

15 VENIREPERSON 31: Charlie Houston.

16 MR. SORRELL: I'm sorry?

17 VENIREPERSON 31: Charlie Houston.

18 MR. SORRELL: Yes. Yes, sir. And  
19 what relative?

20 VENIREPERSON 31: My brother.

21 MR. SORRELL: Pardon me?

22 VENIREPERSON 31: Brother.

23 MR. SORRELL: And what was he  
24 arrested for?

25 VENIREPERSON 31: Drugs.



1 MR. SORRELL: Was that a state or  
2 federal case?

3 VENIREPERSON 31: Federal.

4 MR. SORRELL: And what's his name?

5 VENIREPERSON 31: Johnny Lochran.

6 MR. SORRELL: Oh, okay. Was that  
7 disposed of here in this courthouse?

8 VENIREPERSON 31: Yes.

9 MR. SORRELL: How long ago was that?

10 VENIREPERSON 31: '97.

11 MR. SORRELL: I'm sorry?

12 VENIREPERSON 31: '97.

13 MR. SORRELL: Okay. And do you  
14 believe that your brother was treated fairly by  
15 the criminal justice system?

16 VENIREPERSON 31: No.

17 MR. SORRELL: Would that cause you a  
18 problem hearing evidence in this case?

19 VENIREPERSON 31: I doubt it.

20 MR. SORRELL: I'm sorry?

21 VENIREPERSON 31: I doubt it.

22 MR. SORRELL: Okay. You doubt that  
23 it would cause you a problem or doubt that you  
24 could?

25 And there's no right or wrong

1 answer. It may be that you harbor an ill will  
2 toward the justice system that would affect your  
3 view of the evidence. And that's -- would that  
4 be fair to suggest?

5 VENIREPERSON 31: Yes.

6 MR. SORRELL: Okay. So you think  
7 you might be tainted a little bit by what  
8 happened to your brother?

9 VENIREPERSON 31: Yes.

10 MR. SORRELL: Okay. That's fair  
11 enough. Thank you.

12 Anyone else?

13 Ma'am, number 14?

14 VENIREPERSON 14: Yeah. Sandra St.  
15 Clair.

16 MR. SORRELL: Yes, ma'am.

17 VENIREPERSON 14: My grandson was  
18 convicted of drugs.

19 MR. SORRELL: Was that state or  
20 federal?

21 VENIREPERSON 14: I think it was  
22 state. I don't remember.

23 MR. SORRELL: All right. And how  
24 long ago was it?

25 VENIREPERSON 14: Oh, it's been

1 about 12, maybe 12 years.

2 MR. SORRELL: And has -- that case  
3 has resolved itself?

4 VENIREPERSON 14: Oh, yeah.

5 MR. SORRELL: Do you believe that  
6 your grandson was treated fairly by the criminal  
7 justice system?

8 VENIREPERSON 14: Yes, I do.

9 MR. SORRELL: Would that case affect  
10 your ability to hear evidence in this case?

11 VENIREPERSON 14: No, sir.

12 MR. SORRELL: Okay. Thank you.  
13 Anyone else?

14 Sir, Number 3.

15 VENIREPERSON 3: Don Anderson. I've  
16 had a couple of nephews arrested and sent to  
17 prison drugs and probably assault too.

18 MR. SORRELL: And which relative was  
19 that? Which relative was what?

20 VENIREPERSON 3: What?

21 MR. SORRELL: What relative was  
22 that?

23 VENIREPERSON 3: They're nephews.

24 MR. SORRELL: Okay. Would that  
25 affect your ability to hear evidence in this

1 case?

2 VENIREPERSON 3: No, I don't think  
3 so.

4 MR. SORRELL: Okay. And how long  
5 ago was that?

6 VENIREPERSON 3: I really don't know  
7 what their ages are.

8 MR. SORRELL: More than 10 years?

9 VENIREPERSON 3: They're in their  
10 thirties and forties now, but they're still doing  
11 the same things.

12 MR. SORRELL: So it's been a while?

13 VENIREPERSON 3: Yeah, but it won't  
14 cause problems.

15 MR. SORRELL: Okay. Thank you.

16 Anyone else?

17 (No Response.)

18 MR. SORRELL: Does anyone here have  
19 prior jury experience; that is, have you sat on a  
20 jury before?

21 Juror Number 7.

22 VENIREPERSON 7: Yeah. My name is  
23 Zach Cypret.

24 MR. SORRELL: Yes, sir.

25 VENIREPERSON 7: I sat on a jury, I

1 think it was in April, for the circuit court.

2 MR. SORRELL: In Cape County?

3 VENIREPERSON 7: Yeah. It was a  
4 criminal case.

5 MR. SORRELL: And without telling me  
6 what the verdict was, were you able to reach a  
7 verdict?

8 VENIREPERSON 7: We were.

9 MR. SORRELL: Were you the  
10 foreperson?

11 VENIREPERSON 7: I was not.

12 MR. SORRELL: Okay. Thank you.

13 Ma'am, Juror Number -- is it 5?

14 VENIREPERSON 5: 5, yes.

15 MR. SORRELL: All right.

16 VENIREPERSON 5: Magen Paukner. I  
17 sat on a jury in Ripley County, a criminal case.

18 MR. SORRELL: And were you able to  
19 reach a verdict?

20 VENIREPERSON 5: Yes.

21 MR. SORRELL: How long ago was that?

22 VENIREPERSON 5: Probably 11 years  
23 ago.

24 MR. SORRELL: Okay. Thank you.

25 Anyone else in the jury box?

1 Juror Number 13.

2 VENIREPERSON 13: Chris Barnes. I  
3 was part of the grand jury in Scott County two  
4 years ago.

5 MR. SORRELL: Okay. All right. Is  
6 there anything about that experience that would  
7 cause you a problem hearing evidence in this  
8 case?

9 VENIREPERSON 13: No.

10 MR. SORRELL: Anyone else? Juror  
11 Number --

12 VENIREPERSON 20: Arthur Wilhite,  
13 Juror Number 20. I was part of a jury on a child  
14 abuse case in the County under Judge Ben Lewis.

15 MR. SORRELL: So that was a criminal  
16 case?

17 VENIREPERSON 20: Yes.

18 MR. SORRELL: Were you able to reach  
19 a verdict?

20 VENIREPERSON 20: Yes.

21 MR. SORRELL: And were you the  
22 foreperson?

23 VENIREPERSON 20: No, I was not.

24 MR. SORRELL: Okay. Thank you.

25 VENIREPERSON 20: Thank you.

1 MR. SORRELL: Anyone else? Juror  
2 Number 21.

3 VENIREPERSON 21: Chris Jeffries.

4 MR. SORRELL: Yes.

5 VENIREPERSON 21: It was a criminal  
6 case in Butler County last year, the middle of  
7 last year.

8 MR. SORRELL: Were you able to reach  
9 a verdict?

10 VENIREPERSON 21: Yes.

11 MR. SORRELL: Thank you.

12 Juror Number 17.

13 VENIREPERSON 17: Yes. Susan  
14 Kammler. I was on a jury in Perry County in  
15 probably 1992 or '93.

16 MR. SORRELL: All right. Was that a  
17 criminal case or a civil case?

18 VENIREPERSON 17: I think it was a  
19 criminal.

20 MR. SORRELL: And were you able to  
21 reach a verdict?

22 VENIREPERSON 17: Yes.

23 MR. SORRELL: Were you the  
24 foreperson?

25 VENIREPERSON 17: No.

1 MR. SORRELL: Thank you.

2 Anyone else in the first row back  
3 here?

4 In the second row, Juror Number 23.

5 VENIREPERSON 23: Leonard Boggs.

6 MR. SORRELL: Yes, sir.

7 VENIREPERSON 23: I was an alternate  
8 juror here --

9 MR. SORRELL: Okay.

10 VENIREPERSON 23: -- maybe 20 years  
11 ago.

12 MR. SORRELL: So you weren't -- you  
13 didn't reach a verdict, or at least you didn't  
14 participate?

15 VENIREPERSON 23: I was just an  
16 alternate.

17 MR. SORRELL: Was that a criminal  
18 trial?

19 VENIREPERSON 23: Yes, sir.

20 MR. SORRELL: Thank you.

21 Anyone down that row?

22 Juror Number 26, would you stand,  
23 please. Thank you.

24 VENIREPERSON 26: Steve Ackman. I  
25 was -- I've been on three juries in Jefferson



1 County and one in federal court in St. Louis.

2 MR. SORRELL: Okay. Were those all  
3 criminal trials or civil trials?

4 VENIREPERSON 26: No. They were two  
5 civil and one criminal in Jefferson County and  
6 one civil in St. Louis.

7 MR. SORRELL: And were you the  
8 foreperson of any of those panels?

9 VENIREPERSON 26: On two of them I  
10 was the foreperson.

11 MR. SORRELL: Okay. And were you  
12 able to reach verdicts in the cases that you --

13 VENIREPERSON 26: Yes.

14 MR. SORRELL: You were?

15 VENIREPERSON 26: Yes.

16 MR. SORRELL: Okay. Thank you.

17 Anyone else going down that second row?

18 And how about the third row?

19 Ma'am, Juror Number --

20 VENIREPERSON 33: 33, Valerie  
21 Bollinger.

22 MR. SORRELL: Valerie Bollinger?

23 VENIREPERSON 33: Yes. I served on  
24 a jury in Scott County last fall.

25 MR. SORRELL: Was that a criminal

1 case or civil?

2 VENIREPERSON 33: Criminal.

3 MR. SORRELL: And did you reach a  
4 verdict?

5 VENIREPERSON 33: Yes.

6 MR. SORRELL: And were you the  
7 foreperson?

8 VENIREPERSON 33: No, I was not.

9 MR. SORRELL: Thank you.

10 There was another hand. Yes, Juror  
11 Number 36.

12 VENIREPERSON 36: Wyatt Wagner.

13 I've been summoned three times and just served on  
14 one jury.

15 MR. SORRELL: And were all three  
16 then in state court?

17 VENIREPERSON 36: Two in Stoddard  
18 County and one here.

19 MR. SORRELL: Okay. Was one summons  
20 here recently?

21 VENIREPERSON 36: Today.

22 MR. SORRELL: I'm sorry?

23 VENIREPERSON 36: Today.

24 MR. SORRELL: Oh, okay. That's  
25 fine. Okay. That's fine. Thank you. That

1 would be fine.

2 And then the last juror on that  
3 row I believe 38.

4 VENIREPERSON 38: 38. A criminal  
5 case in Ste. Genevieve County last August,  
6 reached a verdict, and I was not the foreman.

7 MR. SORRELL: Okay. Thank you.

8 Anyone else from the last two  
9 gentlemen?

10 (No Response.)

11 MR. SORRELL: For all the people  
12 that raised their hands on that last question, is  
13 there anything about that process of sitting  
14 through a jury trial and resolving that issue is  
15 there anything about that that would cause you a  
16 problem in reaching a verdict in this case?

17 Thank you. I didn't see any hands.

18 Does everybody realize that the  
19 only -- the only thing you're expected to do is  
20 come up with a verdict on whether a person is --  
21 Mr. Swan is not guilty or guilty of an offense?  
22 That is, you're not expected to play any role in  
23 terms of sentencing Mr. Swan if you find that  
24 he's guilty of one or both of those offenses.  
25 Does everybody understand that your role is just

1 not -- you don't have anything to do with the  
2 sentencing issue?

3 (No Response.)

4 MR. SORRELL: Does anyone have a  
5 problem with that?

6 (No Response.)

7 MR. SORRELL: Thank you.

8 Thank you, Judge.

9 THE COURT: Ms. Booth.

10 MS. BOOTH: Thank you, Your Honor.

11 Defendant's Voir Dire Examination by Ms. Booth

12 MS. BOOTH: Good morning, everyone.

13 I'm sure you-all noticed by the  
14 Judge's tone that today is a very serious day for  
15 Mr. Swan and also for the Government, and he has  
16 given you specific instructions that must be  
17 followed.

18 And my question for you is the  
19 instructions that he's given, do you believe that  
20 it's wise to follow those, or do you believe it's  
21 foolish?

22 For example, do you believe that the  
23 instruction that you must presume Mr. Swan  
24 innocent unless and until the Government presents  
25 evidence that leaves you firmly convinced of

1     guilt, do you believe it's foolish for the Court  
2     to give you that instruction? Do you feel that  
3     that feels like a smokescreen for a guilty person  
4     to hide behind, or do you believe that the Court  
5     has given you that instruction to prevent the  
6     possibility of a wrongful conviction?

7                     (No Response.)

8             MS. BOOTH: We have some jurors here  
9     today who have served on a criminal trial, and  
10    I'm sure you all have an opinion on the matter.  
11    Do you feel that the jury instruction that you've  
12    been given are wise? Does anyone have an opinion  
13    on that?

14                    (No Response.)

15            MS. BOOTH: Does anyone feel that  
16    they're foolish?

17                    (No Response.)

18            MS. BOOTH: For our jurors who have  
19    been on a criminal trial before, is there  
20    anything about that experience that left you  
21    disheartened about the process?

22                    (No Response.)

23            MS. BOOTH: Do you believe that when  
24    the instructions are followed, everything works  
25    accordingly as it should and justice at the end

1 of the day is served, be it guilty or not guilty?

2 (No Response.)

3 MS. BOOTH: I believe we've had a  
4 juror or two on a civil trial before. May I see  
5 the hands on a civil trial?

6 Yes, sir. Juror Number --

7 VENIREPERSON 26: 26, Steve Ackman.

8 MS. BOOTH: Yes, sir. Juror  
9 Number 26, you sat on both a civil trial as well  
10 as a criminal trial?

11 VENIREPERSON 26: That is correct.

12 MS. BOOTH: And the evidence burden  
13 on both those matters is different. The Court  
14 today has instructed you that for a guilty  
15 verdict in a criminal matter the Government must  
16 prove guilt beyond a reasonable doubt. That's a  
17 different burden than at the civil level. The  
18 criminal is higher.

19 Sir, do you agree that that's wise?  
20 Would you be able to follow that instruction?

21 VENIREPERSON 26: Yes, I do.

22 MS. BOOTH: And at a civil trial  
23 what was at stake for the parties? Was it -- was  
24 it money?

25 VENIREPERSON 26: It was money.

1 MS. BOOTH: Yes, sir. And in a  
2 criminal trial what is at stake for the  
3 Defendant?

4 VENIREPERSON 26: Freedom.

5 MS. BOOTH: Yes, sir. Does everyone  
6 understand that?

7 (No Response.)

8 MS. BOOTH: Does anyone think that  
9 the burden for the Government to prove guilt  
10 should be lower, that it shouldn't be that you're  
11 left firmly convinced beyond a reasonable doubt  
12 of the Defendant's guilt? Should it be lower?

13 (No Response.)

14 MS. BOOTH: Today you've heard that  
15 Mr. Swan -- the matter we're dealing with is  
16 felon -- convicted felon in possession of a  
17 firearm.

18 Now, I can tell by looking at  
19 everyone's face that you all understand that is  
20 very serious, and you'll follow the jury  
21 instructions, but we are talking about firearms  
22 here today.

23 So my question is is there anyone  
24 here who has had an experience or has an opinion  
25 about firearms that in all honesty you can say to

1 me, Ms. Booth, I have had a loved one injured by  
2 firearms. I feel very strongly against firearms.  
3 Whatever it may be about firearms, something  
4 that's bothering you that will distract you today  
5 from the evidence or from your duty as jurors if  
6 you're selected on this case.

7 Is there anyone who's had firearms  
8 significantly impact their life?

9 I see no hands.

10 Mr. Swan is black or  
11 African-American, and I anticipate that several  
12 witnesses for Mr. Swan, they will also be black  
13 or African-American. Is there anyone here who  
14 that would affect you adversely, that because of  
15 some issue with race that you won't be able to  
16 follow the Judge's instructions? Does anyone  
17 feel that way?

18 (No Response.)

19 MS. BOOTH: And, again, if any of  
20 the questions I'm asking you it will be difficult  
21 to raise your hand and say in front of anybody  
22 and everybody, be it the question about firearm  
23 violence in your family or in your neighborhood  
24 or the question on race, you can always speak to  
25 the Judge in private at a later time when not in



1 front of everyone.

2 Witnesses will take the witness  
3 stand today, and they will swear to tell the  
4 truth and nothing but. Is there anyone that  
5 believes that simply because the oath is taken  
6 and the witness is sitting in the witness chair  
7 that it's impossible for that person to lie?

8 (No Response.)

9 MS. BOOTH: Has everyone here had  
10 enough life experience to know when they're not  
11 being told the truth?

12 (No Response.)

13 MS. BOOTH: Is there anyone who  
14 feels that they wouldn't be able to critically  
15 examine what a witness is saying to tell them  
16 whether or not they're telling the truth?

17 (No Response.)

18 MS. BOOTH: We will also have  
19 several police officers testify here today. Does  
20 anyone have any police officers who are family  
21 members or good friends or good neighbors?

22 I see several hands.

23 All right. And, sir, here, Juror  
24 Number 4.

25 VENIREPERSON 4: James Rickus.

1 MS. BOOTH: Yes, sir.

2 VENIREPERSON 4: I have two cousins  
3 and who are on the force in the State of Florida.

4 MS. BOOTH: All right. And you're  
5 certainly close to your cousins, and you have a  
6 lot of respect for them?

7 VENIREPERSON 4: Uh-huh.

8 MS. BOOTH: And I'm certain you have  
9 a lot of respect for them because they do their  
10 job with integrity. Sir, if police officers  
11 testify here today and you are a juror, will you  
12 be able to critically analyze their testimony to  
13 see if, perhaps, they're mistaken or not telling  
14 the truth?

15 VENIREPERSON 4: Yes.

16 MS. BOOTH: Will you automatically  
17 assume that they will be telling the truth or  
18 can't be mistaken?

19 VENIREPERSON 4: No.

20 MS. BOOTH: And for the other jurors  
21 who've raised your hand about police officers in  
22 your family or close friends, my same question to  
23 all of you. Is there anyone who says it's  
24 impossible for a police officer to be mistaken  
25 about a fact or it's impossible that a police

1 officer may not tell the whole truth?

2 (No Response.)

3 MS. BOOTH: For those of you who are  
4 selected for the jury after the evidence has been  
5 presented to you and the parties close their  
6 cases, you will have the opportunity to  
7 deliberate. And I know several of our jurors  
8 here today have already been through that  
9 process.

10 And that is a process where it's not  
11 time to be meek. Jurors may disagree with each  
12 other. You may have strong arguments or  
13 discussions about the evidence.

14 Is there anyone here who believes  
15 that they would not be able to participate  
16 respectfully with other jurors in the  
17 deliberations because they'd be too timid to take  
18 their stand and say what they feel about a case?  
19 Is there anyone who just cannot make their  
20 opinion known if it's against the grain of other  
21 people?

22 (No Response.)

23 MS. BOOTH: Again, as the Court has  
24 told you, also Mr. Sorrell has told you, and I  
25 will tell you as well, today's matter is very

1 serious. If there's anything that we haven't  
2 discussed here today that would make you unfair  
3 to either party to the Government or to the  
4 Defendant, please let us know. Is there anything  
5 that we haven't asked you?

6 (No Response.)

7 MS. BOOTH: Thank you for your time.

8 THE COURT: Ladies and gentlemen,  
9 we'll need a recess of about 20 or 25 minutes to  
10 reduce your number to the 12 who will hear the  
11 case plus one alternate. So I'll ask you to go  
12 back down to the first floor in the jury assembly  
13 room.

14 And during this time, do not discuss  
15 this case among yourselves or with others or  
16 permit anyone to discuss it in your presence. Do  
17 not form or express any opinion about the case  
18 until it's given to you to you decide.

19 Thanks for your patience. We'll  
20 call you back up just as soon as possible.

21 So please go back to the jury  
22 assembly room on the first floor.

23 (Proceedings resumed in open court  
24 outside the presence of the jury.)

25 THE COURT: Okay. I'm going to

1       excuse Juror Number 12 because she said she  
2       couldn't serve two days and has an eye doctor  
3       appointment tomorrow.

4               I'm also going to excuse Juror  
5       Number 11, Megan Stafford, who said that she has  
6       a child care problem that cannot be solved.

7               And also Juror Number 24 who also  
8       had a child care problem that could not be  
9       solved.

10              And so with that are there any  
11       strikes for cause for the Government?

12              MR. SORRELL: Your Honor, I think  
13       yours were 11, 12 and 24; is that right?

14              THE COURT: Yes.

15              MR. SORRELL: Okay. Judge, we would  
16       ask to strike for cause Number 31, Mr. Houston.

17              THE COURT: Any objection?

18              MS. BOOTH: I'm sorry, sir, is that  
19       juror number who?

20              THE COURT: 31. He said that his  
21       brother was convicted of drugs about seven years  
22       ago and was not treated fairly, and he would be  
23       tainted a little bit if he had to serve on the  
24       jury.

25              MS. BOOTH: No objection.

1 THE COURT: 31 is stricken for  
2 cause.

3 Next?

4 MR. SORRELL: No other strikes, Your  
5 Honor. Thank you.

6 THE COURT: Any strikes for cause  
7 for Defendant?

8 MS. BOOTH: Your Honor, Mr. Tony  
9 Chilton who would be Juror Number 40, which is  
10 the gentleman who has, I believe, a cousin  
11 somehow married or connected with Mr. Sorrell's  
12 family. Though Mr. Chilton said that --

13 THE COURT: That's fine. I'm going  
14 to excuse him anyway because we're not going to  
15 need him.

16 MS. BOOTH: Right.

17 THE COURT: He's the last one. So  
18 I'll excuse him.

19 MS. BOOTH: Sir, if you would just  
20 give me a moment, please.

21 THE COURT: Sure.

22 MS. BOOTH: No, sir. No other  
23 strikes for cause.

24 THE COURT: Okay. So I'm going to  
25 give 10 strikes to the Defendant, six to the

1 Government, and we'll have one alternate. And  
2 we'll have three from which to choose the one  
3 alternate. So we've stricken four, so that  
4 leaves 36. And we'll need 10 plus 6 plus 12,  
5 which is 28. Plus three more for alternate. So  
6 we need to qualify 31.

7 (A discussion was held off the  
8 record.)

9 THE COURT: Okay. We'll go back on  
10 the record. I think that you can make your  
11 strikes up to Juror Number 32, Catherine Mouser.  
12 And then the alternate will be selected from  
13 Jurors 33, 34 and 35. So each side will have one  
14 strike each among those, 33, 34 and 35 jurors.

15 And then I will excuse Juror 36, 37,  
16 38 and 39 as well as 40, which I already excused.  
17 And that should be the right calculation.

18 MR. SORRELL: I believe it is,  
19 Judge.

20 MS. BOOTH: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. TILSEN: Yes, Your Honor.

23 THE COURT: All right. So we'll be  
24 in recess while you make your strikes.

25 Anything you want to discuss before?

1 MR. SORRELL: No, Your Honor.

2 THE COURT: All right. Thank you.

3 (Proceedings stood in temporary  
4 recess.)

5 (Proceedings resumed in open court  
6 outside the presence of the jury.)

7 THE COURT: The Court Clerk has  
8 advised me that one of the prospective jurors has  
9 a problem and wants to talk to me, so bring her  
10 in, and we'll have a bench conference.

11 Ma'am, do you want to come up.

12 Mr. Sorrell, Ms. Booth, you can come  
13 up.

14 (Proceedings were held at sidebar,  
15 outside the hearing of the jury.)

16 THE COURT: You're Juror Number 19?

17 VENIREPERSON 19: Yes.

18 THE COURT: You had something you  
19 want to stay?

20 VENIREPERSON 19: Yes.

21 THE COURT: Speak into the  
22 microphone.

23 VENIREPERSON 19: I think my brother  
24 has been charged with the same thing as the  
25 Defendant has been charged with.



1 THE COURT: Being a felon in  
2 possession of a firearm?

3 VENIREPERSON 19: Yes. And I think  
4 it was back in probably '93. But I have had no  
5 contact with any of my siblings after my father  
6 passed away in '97. When we buried him, I buried  
7 them too.

8 THE COURT: Any questions?

9 MR. SORRELL: Would that affect your  
10 ability to hear evidence in this case?

11 VENIREPERSON 19: Not at all.

12 MR. SORRELL: Was he treated fairly  
13 as far as you know?

14 VENIREPERSON 19: As far as I know  
15 and I'm concerned, yes.

16 MR. SORRELL: Okay. That's all.

17 VENIREPERSON 19: I mean --

18 MS. BOOTH: Juror Number 19, the  
19 fact that your brother was accused of that do you  
20 feel that the Government wouldn't accuse my  
21 client of that if he really wasn't probably  
22 guilty? Can you presume innocence even though  
23 you have some strong feelings about your brother?

24 VENIREPERSON 19: Sure. I could.  
25 If you guys show the evidence, I mean, they got

1 to prove to me that they actually done it, which  
2 I know my brother did do it.

3 MS. BOOTH: Yes, ma'am.

4 VENIREPERSON 19: So I know he is  
5 guilty.

6 MS. BOOTH: Thank you.

7 THE COURT: Thank you.

8 (Proceedings resumed in open court  
9 outside the presence of the jury.)

10 THE COURT: Counsel, I don't think  
11 that there's any need for concern about Juror 19.  
12 She just wanted to give some more information  
13 about a relative who had been convicted. Do you  
14 agree?

15 MR. SORRELL: I do.

16 THE COURT: Do you agree, Ms. Booth?

17 MS. BOOTH: I agree.

18 THE COURT: So where are we on your  
19 strikes?

20 MR. TILSEN: There's a list  
21 somewhere.

22 THE CLERK: Yes. I have it. I was  
23 just waiting to find out if we were going to  
24 have --

25 THE COURT: Okay.

1 MR. TILSEN: It's always wise to  
2 check and make sure that is there.

3 (A discussion was held off the  
4 record.)

5 MR. TILSEN: Your Honor, can the  
6 marshals take my client back to the men's room?  
7 They have a bathroom right there.

8 THE COURT: Sure.

9 MR. TILSEN: As long as the jurors  
10 aren't here.

11 THE COURT CLERK: 33 is your  
12 alternate strike?

13 MR. TILSEN: Yes.

14 THE CLERK: So I have the jurors as  
15 Number 2, Marshall; Number 6, Barnett; Number 8,  
16 Baker; Number 9, Edwards; Number 10, Jordan;  
17 Number 16, Gilboe; 18, Anderson; 19, Mayberry;  
18 21, Jeffries; 26, Ackman; 27 Jones; 28 Kight.  
19 And then the alternate as 35 Carroll.

20 MR. SORRELL: Yes, Your Honor. Yes,  
21 ma'am.

22 THE COURT: The Government agrees?

23 MR. SORRELL: Yes.

24 THE COURT: The defense agrees.

25 MS. BOOTH: Sir, I apologize. I

1 didn't hear some of the front numbers because it  
2 was a little soft. May I hear those numbers  
3 again?

4 THE COURT CLERK: Sure.

5 MS. BOOTH: Just the numbers are  
6 fine.

7 THE CLERK: 2, 6, 8, 9, 10, 16, 18,  
8 19, 21, 26, 27, 28 and 35 as the alternate.

9 MS. BOOTH: Correct.

10 THE COURT: Okay. So before  
11 bringing the jury back in I had one question  
12 about the instructions that were submitted by the  
13 Government, and that is on it's Instruction  
14 Number 2 in the initial instructions, and it's  
15 based on Eighth Circuit 1.02, but it talks a lot  
16 about -- it talks about some of the elements are  
17 stipulated to. I want to make sure that is an  
18 agreed on instruction. It's actually an optional  
19 instruction. But is that agreed on by the  
20 Government and Defendant?

21 MS. BOOTH: Yes, sir.

22 MR. SORRELL: Yes, Your Honor.

23 THE COURT: Okay. And the other  
24 thing, too, is that we'll try to get in opening  
25 statements before we take a lunch break.

1 MR. SORRELL: Yes.

2 THE COURT: And so with that we can  
3 bring the jury panel in, and we'll seat them in  
4 the back, and then we'll call them one by one to  
5 be seated in the jury box itself. So if you want  
6 to take a quick break, now is the time to do it.

7 MR. SORRELL: And we'll invoke the  
8 rule on witnesses, and I think the defense would  
9 too.

10 MS. BOOTH: Yes, sir.

11 THE COURT: So the rule on witnesses  
12 is invoked.

13 MR. SORRELL: Thank you, Your Honor.  
14 (Proceedings stood in temporary  
15 recess.)

16 (Proceedings resumed in open court.)

17 THE COURT: Ladies and gentlemen, as  
18 your name is called please take a seat in the  
19 jury box at the direction of the clerk.

20 THE COURT CLERK: Juror Number 1,  
21 Pearlina Marshall.

22 Juror Number 2, Andrew Barnett.

23 Juror Number 3, Steven Ray Baker,  
24 Junior.

25 Juror Number 4, Elizabeth Edwards

1       Sexton.

2                       Juror Number 5, Eden Jordan.

3                       Juror Number 6, Diane (sic.) Gilboe.

4                       Juror Number 7, Adrian Anderson.

5                       Juror Number 8, Sandra Mayberry.

6                       Juror Number 9, Christopher

7       Jeffries.

8                       Juror Number 10, Steven Ackman.

9                       Juror Number 11, Wanda Jones.

10                      Juror Number 12, Sherry Kight.

11                      Juror Number 13, Lisa Carroll.

12                      THE COURT: Ladies and gentlemen,  
13 those of you who were not called are excused at  
14 this time. I want to thank you for your service.  
15 You'll be paid for the entire day.

16                      I do want to tell you, though, that  
17 this is a public proceeding, and you are invited  
18 to watch any or all of this trial as you may  
19 wish. Thank you again for your service.  
20 Otherwise, you're excused.

21                      All right. Ladies and gentlemen,  
22 please rise and be sworn in by the Court clerk.

23                      (Jury Sworn and Instructions Read.)

24                      THE COURT: This is Instruction  
25 Number 1: Ladies and gentlemen, I will take a

1     few moments now to give you some initial  
2     instructions about this case and about your  
3     duties as jurors. At the end of the trial I will  
4     give you further instructions. I may also give  
5     you instructions during the trial.

6                 Unless I specifically tell you  
7     otherwise, all the instructions, both those I  
8     give you now and those I give you later, are  
9     equally binding on you and must be followed.

10                You must leave your cell phone, PDA,  
11     blackberry, smart phone, iPhone and any other  
12     wireless communication devices in the jury room  
13     during the trial, and you may only use them  
14     during breaks.

15                However, you are not allowed to have  
16     cell phones in the jury room during your  
17     deliberations. You may give the cell phone to  
18     the bailiff or deputy clerk for safekeeping just  
19     before you start the deliberations then.

20                This is a criminal case brought  
21     against the Defendant by the United States  
22     Government. The defendant is charged with being  
23     a felon in possession of a firearm in two  
24     separate counts. Those charges are set forth in  
25     what is called an indictment, which reads in

1 relevant part as follows: Count 1, on or about  
2 May 26th, 2018, in Cape Girardeau County within  
3 the Southeastern Division of the Eastern District  
4 of Missouri, Barrett C. Swan, the Defendant  
5 herein, did possess in and affecting interstate  
6 commerce, to wit: A Smith & Wesson, Model SD9VE,  
7 nine-millimeter handgun, Serial Number HEN9114,  
8 and had previously thereto been convicted in any  
9 court of a crime punishable by imprisonment for a  
10 term exceeding one year.

11 In Count 2, on or about August 1st,  
12 2018, in St. Louis County, within the Eastern  
13 District of Missouri, Barrett C. Swan, the  
14 Defendant herein, did possess in and affecting  
15 interstate commerce a firearm, to wit: A Smith &  
16 Wesson Model M&P 9 Shield, nine-millimeter  
17 semi-automatic handgun, Serial Number LDE1400  
18 and had previously thereto been convicted in any  
19 court of a crime punishable by imprisonment for a  
20 term exceeding one year.

21 You should understand that an  
22 indictment is simply an accusation. It is not  
23 evidence of anything. The Defendant has pleaded  
24 not guilty and is presumed to be innocent unless  
25 and until proved guilty beyond a reasonable



1 doubt. It will be your duty to decide from the  
2 evidence whether the Defendant is guilty or not  
3 guilty of the crimes charged.

4 From the evidence you will decide  
5 what the facts are. You're entitled to consider  
6 that evidence in the light of your own  
7 observations and experiences in the affairs of  
8 life. You may use reason and common sense to  
9 draw deductions or conclusions from facts that  
10 have been established by the evidence.

11 You will then apply those facts to  
12 the law that I will give you in these and in my  
13 other instructions, and in that way reach your  
14 verdict. You're the sole judges of the facts,  
15 but you must follow my instructions whether you  
16 agree with them or not, and you have taken an  
17 oath to do so.

18 Do not allow sympathy or prejudice  
19 to influence you. The law demands of you a just  
20 verdict unaffected by anything except the  
21 evidence, your common sense and the law as I give  
22 it to you.

23 You should not take anything I may  
24 say or do during the trial as indicating what I  
25 think of the evidence or what I think your

1 verdict should be.

2 Finally, please remember that only  
3 this Defendant, not anyone else, is on trial here  
4 and that this Defendant is on trial only for the  
5 crimes charged, not for anything else.

6 Instruction Number 2: In order to  
7 help you follow the evidence I will now give you  
8 a brief summary of the elements of the crimes  
9 charged which the Government must prove beyond a  
10 reasonable doubt to make its case.

11 One, the Defendant had been  
12 convicted of a crime punishable by imprisonment  
13 for more than one year.

14 Two, the Defendant knew that he had  
15 been convicted of a crime punishable by  
16 imprisonment for more than one year.

17 Three, after that the Defendant  
18 knowingly possessed a firearm.

19 And, four, the firearm was  
20 transported across the state line at some time  
21 during or before the Defendant's possession of  
22 it.

23 Only the third element is disputed  
24 in this trial. That is whether the Defendant  
25 knowingly possessed a firearm for each charge.

1           The Defendant and the Government has  
2 stipulated that the other elements are proven.

3           You should understand, however, that  
4 what I have just given you is only a preliminary  
5 outline. At the end of the trial I will give you  
6 a final instruction on these matters. If there's  
7 any difference between what I just told you and  
8 what I tell you in the instructions I give you at  
9 the end of the trial, the instructions given at  
10 the end of the trial must govern you.

11           Instruction Number 3: I mentioned  
12 the word "evidence." "Evidence" includes the  
13 testimony of witnesses, documents and other  
14 things received as exhibits, any facts that have  
15 been stipulated, that is, formally agreed to by  
16 the parties and any facts that have been  
17 judicially noticed, that is, facts which I say  
18 that you may but are not required to accept as  
19 true even without evidence.

20           Certain things are not evidence. I  
21 shall list those things for you now. One,  
22 statements, arguments, questions and comments by  
23 lawyers representing the parties in the case are  
24 not evidence.

25           Two, objections are not evidence.

1 Lawyers have a right to object when they believe  
2 something is improper. You should not be  
3 influenced by the objection. If I sustain an  
4 objection to a question, you must ignore the  
5 question and must not try to guess what the  
6 answer might have been.

7 Three, testimony that I strike from  
8 the record or tell you to disregard is not  
9 evidence and must not be considered.

10 Four, anything you see or hear about  
11 this case outside the courtroom is not evidence  
12 unless I specifically tell you otherwise during  
13 the trial. Furthermore, a particular item of  
14 evidence is sometimes received for a limited  
15 purpose only. That is, it can be used by you  
16 only for one particular purpose and not for any  
17 other purpose. I will tell you when and if that  
18 occurs and instruct you on the purposes for which  
19 the item can and cannot be used.

20 Finally, some of you may have heard  
21 the terms "direct evidence" and "circumstantial  
22 evidence." You're instructed that you should not  
23 be concerned with those terms. The law makes no  
24 distinction between direct and circumstantial  
25 evidence. You should give all the evidence the

1 weight and value you believe it is entitled to  
2 receive.

3 Instruction Number 4: In deciding  
4 what the facts are you may have to decide what  
5 testimony you believe and what testimony you do  
6 not believe. You may believe all of what a  
7 witness said or only part of it or none of it.

8 In deciding what testimony of any  
9 witness to believe consider the witness's  
10 intelligence, the opportunity the witness had to  
11 have seen or heard the things testified about,  
12 the witness's memory, any motives that witness  
13 may have for testifying a certain way, the manner  
14 of the witness while testifying, whether that  
15 witness said something different at an earlier  
16 time, the general reasonableness of the testimony  
17 and the extent to which the testimony is  
18 consistent with other evidence that you believe.

19 Instruction Number 5: During the  
20 trial, it may be necessary for me to talk with  
21 the lawyers out of the hearing the of the jury  
22 either by having a bench conference here while  
23 the jury is present in the courtroom or by  
24 calling a recess. Please understand that while  
25 you are waiting we are working.

1           The purpose of these conferences is  
2   to decide how certain evidence is to be treated  
3   under the rules of evidence and to avoid  
4   confusion and error. We will, of course, do what  
5   we can to keep the number and length of these  
6   conferences to a minimum.

7           Instruction Number 6: At the end  
8   of the trial you must make your decision based on  
9   what you recall of the evidence. You will not  
10   have a written transcript to consult, and it may  
11   not be practical for the court reporter to read  
12   or play back lengthy testimony, so you must pay  
13   close attention to the testimony as it is given.

14          Instruction Number 7: To ensure  
15   fairness, you must obey the following rules:  
16   First, do not talk or communicate among  
17   yourselves about this case or about anyone  
18   involved with it until the end of the case when  
19   you go to the jury room to decide on your  
20   verdict.

21          Second, do not talk with anyone else  
22   about this case or about anyone involved with it  
23   until the trial has ended and you have been  
24   discharged as jurors.

25          Third, when you are outside the

1 courtroom, do not let anyone tell you anything  
2 about the case or about anyone involved with it  
3 until the trial has ended and your verdict has  
4 been accepted by me.

5 If someone should try to talk to you  
6 about the case during the trial, please report it  
7 to the bailiff or deputy clerk.

8 Fourth, during the trial, you should  
9 not talk with or speak to any of the parties,  
10 lawyers, or witnesses involved in the case. You  
11 should not even pass the time of day with any of  
12 them. It is important not only that you do  
13 justice in this case but also that you give the  
14 appearance of doing justice.

15 So if a person from one side of the  
16 lawsuit sees you talking to a person from the  
17 other side, even if it is simply to pass the time  
18 of day, an unwarranted and unnecessary suspicion  
19 about your fairness might be aroused.

20 If any lawyer, party or witness does  
21 not speak to you in the hall or when you ride the  
22 elevator or the like, it is because they're not  
23 supposed to talk to you or visit with you.

24 Fifth, it may be necessary for you  
25 to tell your family, close friends, teachers

1 co-workers or employer about your participation  
2 in this trial. You can explain to them when you  
3 are required to be in court, but you must warn  
4 them not to ask you any questions about the case  
5 or tell you anything they know or think they know  
6 about the case or discuss the case in your  
7 presence.

8           You must not communicate with anyone  
9 or post information about the parties, witnesses,  
10 participants, charges, evidence or anything else  
11 related to the case.

12           You must not tell anyone anything  
13 about your deliberations in the case until after  
14 I accept your verdict or until I give you  
15 specific permission to do so.

16           If you discuss the case with someone  
17 other than the other jurors during the  
18 deliberations, it could create a perception that  
19 you have clearly decided the case or that you may  
20 be influenced in your verdict by their opinions.  
21 That would not be fair to the parties, and it may  
22 result in the verdict being thrown out and the  
23 case having to be retried.

24           During the trial, while you were in  
25 the courthouse, and after you leave for the day,



1 do not provide any information to anyone by any  
2 means about this case. Thus, for example, do not  
3 talk face-to-face or use any electronic device or  
4 media, such as the telephone, a cell or smart  
5 phone, Blackberry, PDA, computer, the internet,  
6 any internet service, any text or instant  
7 messaging service, any internet chat room, blog,  
8 or website like Facebook, MySpace, YouTube or  
9 Twitter, or any other way to communicate to  
10 anyone any information about this case until I  
11 accept your verdict.

12 Sixth, do not do any research on the  
13 internet in libraries, in newspapers or any other  
14 way to make any investigation about this case on  
15 your own.

16 Do not visit or view any place  
17 discussed in this case and do not use internet  
18 programs or any other device to search for or to  
19 view any place discussed in the testimony.

20 Also, do not research any  
21 information about this case, the law or people  
22 involved, including the parties, the witnesses  
23 and the lawyers.

24 Seventh, do not read any news  
25 stories or articles in print or on the internet

1 or in any blog about the case or about anyone  
2 involved with it or listen to any radio or  
3 television reports about the case or about anyone  
4 involved with it.

5 I do not know whether there might be  
6 any news reports in the case, but if there are,  
7 you might inadvertently find yourself reading or  
8 listening to something before you could do  
9 anything about it.

10 The parties have a right to have the  
11 case decided only on the evidence they know about  
12 and that has been introduced here in court. If  
13 you do some research or investigation or  
14 experiment that we don't know about, then your  
15 verdict may be influenced by inaccurate,  
16 incomplete or misleading information that has not  
17 been tested by the trial process, including the  
18 oath to tell the truth and by cross-examination.

19 All of the parties are entitled to a  
20 fair trial rendered by an impartial jury, and you  
21 must conduct yourself so as to maintain the  
22 integrity of the trial process.

23 If you decide a case based on  
24 information not presented in court, you will have  
25 denied the parties a fair trial, and you will

1 have done an injustice.

2 You are required to abide by these  
3 rules, and you have taken an oath to do so.  
4 Failure to follow these instructions may result  
5 in the case having to be retried and could result  
6 in you being held in contempt of court.

7 Eighth, do not make up your mind  
8 during the trial about what the verdict should  
9 be. Keep an open mind until after you have gone  
10 to the jury room to decide the case and you and  
11 your fellow jurors have discussed the evidence.

12 Instruction Number 7: The trial  
13 will proceed in the following manner:

14 First, the Government will make an  
15 opening statement. Next, the Defendant's attorney  
16 may, but does not have to, make an opening  
17 statement. An opening statement is not evidence  
18 but is simply a summary of what the attorney  
19 expects the evidence to be.

20 The Government will then present its  
21 evidence, and counsel for the Defendant may  
22 cross-examine. Following the Government's case,  
23 the Defendant may, but does not have to, present  
24 evidence or to testify or to call witnesses. If  
25 the Defendant calls witnesses, the Government may

1 cross-examine them.

2 After the presentation of the  
3 evidence is completed, the Court will instruct  
4 you further on the law.

5 The attorneys will then make their  
6 closing arguments to summarize and interpret the  
7 evidence for you. As with opening statements,  
8 closing arguments are not evidence.

9 After that, you will retire to  
10 deliberate on your verdict.

11 Counsel for the Government, you may  
12 proceed with your opening statement.

13 MS. WOODRUFF: Thank you, Your  
14 Honor.

15 Government's Opening Statement

16 MS. WOODRUFF: May it please the  
17 Court.

18 Ladies and gentlemen, the evidence  
19 that you will hear in this case when boiled down  
20 to its bare bones is all about one man, and that  
21 man is the Defendant, Barrett Swan.

22 Mr. Swan, as you heard, is a  
23 convicted felon. That means that he is  
24 absolutely prohibited from possessing any firearm  
25 of any type for any reason.

1                   And yet on two different occasions  
2                   in 2018 when police encountered Mr. Swan he was  
3                   found to be in possession of a gun on both of  
4                   those occasions, so he is charged with two  
5                   counts. Count 1 is felon in possession of a  
6                   firearm. And, as you've heard, Count 2 is also  
7                   felon in possession of a firearm.

8                   I anticipate the evidence that you  
9                   will hear today as to Count 1 will be that on  
10                  May 26th of 2018, right around 3:40 in the  
11                  morning, a number of officers from the Cape  
12                  Girardeau Police Department were down in the area  
13                  of the Mississippi River bridge. It's actually  
14                  just a few blocks from here.

15                  They were down there in response to  
16                  investigating a different offense, nothing that  
17                  has to do with Mr. Swan. But they could see the  
18                  Mississippi River bridge. And they heard the  
19                  very distinctive sound of somebody just flooring  
20                  their gas pedal. It's a sound that everybody is  
21                  aware of.

22                  And so the officers looked over  
23                  towards the bridge, and they see a dark colored  
24                  passenger car just fly into Missouri from the  
25                  Illinois side. One of those officers, Officer

1 Brotz, he noticed that the speed of the vehicle  
2 was 90 miles an hour in a 45 miles per hour zone.

3 Another officer, Patrolman Kyle  
4 Evans, he called on the speeding car to dispatch.  
5 And then he attempts to catch up to that car. So  
6 he is driving in kind of a parallel path to the  
7 direction of the car trying to catch up to it.

8 He does eventually get behind it,  
9 and he sees that it is a black Dodge Charger, a  
10 passenger car. He notes the license plate  
11 number, but, as it turns out, he is actually  
12 familiar with this car, because it belongs to  
13 someone who lives in his neighborhood, Barrett  
14 Swan.

15 So Patrolman Evans turns on his  
16 police lights, turns on his siren, and he  
17 attempts to just pull the car over for speeding,  
18 but the car does not stop. And instead it keeps  
19 going.

20 Patrolman Evans will tell you that  
21 he was pursuing what should have been a simple  
22 speeding ticket stop. He was pursuing this black  
23 Dodge Charger in this residential neighborhood,  
24 and they got up to speeds around 70 at this  
25 point.

1                   Now, the driver of that Charger  
2                   tried to maneuver a turn at Henderson and Good  
3                   Hope and lost control of their car. So the car  
4                   crashes, and it hits a parked motor vehicle.  
5                   It's not a huge crash, but it's enough to stop  
6                   that Dodge Charger.

7                   So Patrolman Evans, he's right  
8                   behind him, he sees the crash. He gets out of  
9                   his car, and he sees the driver's side door open,  
10                  and he sees Barrett Swan get out of the driver's  
11                  side door.

12                 He recognizes him on sight. Again,  
13                 they live close to one another. And he called  
14                 down to him, Barrett, stop. Well, Mr. Swan  
15                 turns, he looks back at him, and he takes off  
16                 running. So Patrolman Evans is now pursuing him  
17                 on foot yelling his name, calling him by name  
18                 telling him to stop, but Mr. Swan keeps running.  
19                 Patrolman Evans sees him look back, and he keeps  
20                 on going.

21                 Now, another officer had joined the  
22                 pursuit, and he was behind Patrolman Evans' car,  
23                 and that is Sergeant Rodney Edwards. Sergeant  
24                 Edwards will tell you that he arrived on scene.  
25                 He didn't see the crash, but he did see Barrett

1 Swan get out of the driver's seat, leave the  
2 driver's side door wide open, sees him take off  
3 running. He sees Patrolman Evans chasing him on  
4 foot. And Sergeant Edwards, he doesn't get out  
5 at that point. He stays in his car. And so he  
6 is following along trying to keep an eye on  
7 Barrett Swan and trying to see which direction  
8 he's traveling in.

9 Eventually he sees him kind of  
10 double back. Sergeant Edwards then does get out  
11 of his car, and he finds Barrett Swan hiding in  
12 some tall brush next to a house. He approaches  
13 him at that point. And he tells him, Don't move.  
14 He then takes Mr. Swan into custody and handcuffs  
15 him.

16 At this point just three minutes  
17 have passed. Three minutes from the time the  
18 officers heard that speeding car and called it in  
19 until Mr. Swan was taken into custody. It  
20 happened so fast.

21 Now, back at the scene of the  
22 Charger another officer has arrived, and that's  
23 Patrolman Yoder. So Yoder pulls up. He sees  
24 Patrolman Evans' car parked behind the Dodge  
25 Charger. And he approaches the Dodge carefully,



1 of course. Driver's side door is still wide  
2 open. There's no one else around.

3 And as he gets up to the car, there,  
4 just plain as day, in the open pocket of the  
5 driver's side door he sees a handgun. It's a  
6 Smith & Wesson nine-millimeter semi-automatic  
7 firearm.

8 So Patrolman Yoder takes possession  
9 of that gun, and he renders it safe, which means  
10 he unloads it. And he finds that it's loaded  
11 with 15 bullets in the magazine and one bullet in  
12 the chamber.

13 So he unloads the gun. He places it  
14 on a driver's side seat. Of course, no one else  
15 is in the car. And he looks through the car to  
16 see if there are any other weapons. There is  
17 not. He finds just a couple of cards with Mr.  
18 Swan's name on it, a little bit of marijuana and  
19 a couple of cell phones, some business cards.

20 And he just collects all of those  
21 items and puts them in the driver's side seat so  
22 the evidence technician that night, Corporal  
23 Brett Hellmann, can easily collect the evidence,  
24 take pictures of it and take pictures of the  
25 scene.

1                   So Mr. Swan then on May 26th is  
2 transported to the Cape Girardeau Police  
3 Department under arrest for those offenses. And  
4 through the normal course of things he's  
5 eventually taken into custody.

6                   Now, fast forward, it's about two  
7 months later. Mr. Swan has been charged in  
8 federal court with felon in possession of a  
9 firearm for the events of May 26th, and there's a  
10 warrant outstanding for his arrest.

11                  And so it was on August 1st of 2018,  
12 this time in Florissant, Missouri, around the  
13 St. Louis area, but also within the Eastern  
14 District of Missouri, Patrolman Jonathan Kemp  
15 with the Florissant Police Department, he's just  
16 on regular patrol, and he sees a Ford Edge commit  
17 a minor traffic violation having to do with a  
18 stop sign.

19                  So he conducts a traffic stop, and  
20 the car stops no problem. Now, it's about 3:40  
21 in the morning. And so Officer Kemp, he  
22 approaches the Ford Edge to make contact with  
23 whoever is inside, and he sees that there are two  
24 people. One is the driver Tiara Thorpe. She is  
25 the owner of the car. And he also sees a front

1 seat passenger, an adult male.

2 So Officer Kemp asks both occupants  
3 for identification. Tiara Thorpe turns hers over  
4 without an issue, but her male passenger said, I  
5 don't have any ID on me. So instead he just  
6 verbally gives a name, a date of birth and a  
7 Social Security Number. That is very unique  
8 information to each of us in this country.

9 So when Officer Kemp goes back to  
10 his computer in the patrol car, he runs both of  
11 the names for this computer, and sure enough  
12 Tiara Thorpe comes up no issues, but the name and  
13 the information given by the male passenger, it  
14 pops up a picture of somebody who is not that  
15 male passenger.

16 So Officer Kemp goes back to the  
17 car, and he has a short conversation with the  
18 passenger saying, Who are you? And eventually  
19 the man says that his name is Barrett Swan.

20 So the officer, he's not familiar  
21 with Mr. Swan at all. He didn't know he has a  
22 warrant. So he has to go back to his patrol car  
23 and run that information through, and then he  
24 learns that Barrett Swan has a federal warrant  
25 out for his arrest.

1                   So Officer Kemp goes back to the car  
2     after he confirms the warrant, and he asks  
3     Mr. Swan to step out. Now, it's dark out, and  
4     Officer Kemp is standing right there. As  
5     Mr. Swan starts to get out of the car, he's  
6     looking inside, and he sees what at first he  
7     thinks is part of the seatbelt housing right  
8     there at the hip, but as Mr. Swan fully steps out  
9     the officer sees that it's actually a handgun.  
10    So he immediately asks the driver Tiara Thorpe to  
11    also step out.

12                  So Barrett Swan is then handcuffed.  
13    He's secured. Then Officer Kemp returns to the  
14    Ford Edge. And there in that front passenger  
15    seat where Mr. Swan had been seated he finds a  
16    handgun.

17                  Now, the way that gun was positioned  
18    it wasn't like square in the center of the seat.  
19    Instead it was kind of by his hip pointed towards  
20    the motor. And then the barrel would have been  
21    behind him at that crease where the back meets  
22    the seat where Mr. Swan had been seated.

23                  So the officer seizes that firearm.  
24    He finds it is loaded. And then it's also a  
25    Smith & Wesson nine-millimeter semi-automatic

1 handgun, obviously a different one than the one  
2 in Cape. But the officer takes possession of  
3 that gun. He, of course, takes possession of  
4 Mr. Swan. And he transports Mr. Swan to the  
5 Florissant Police Department.

6 When they get there, he starts the  
7 booking process, and he tells Mr. Swan, Hey, once  
8 we get you booked in I'm going to take you to an  
9 interview room and give you a chance to tell me  
10 about that gun I found. And Mr. Swan told him,  
11 We both know what you found in the car.

12 And he goes on to say something to  
13 the effect of I would rather be in this situation  
14 that I'm in right now than the one I found myself  
15 in in the past where I was shot, and I didn't  
16 have anything on me. So those two detailed  
17 events are what give rise to Counts 1 and 2.

18 You will also hear evidence that Mr.  
19 Swan has a prior felony conviction for felon in  
20 possession of a firearm. Now that offense is  
21 from 2006. And you can consider it for  
22 Mr. Swan's intent on these two firearms as well  
23 as the lack of action on the state in his  
24 possession of the two firearms he's charged with  
25 today.

1                   So after you hear all the evidence,  
2                   I will come back, and I will ask that you find  
3                   Barrett Swan guilty of Count 1, felon in  
4                   possession of a firearm for possession of a  
5                   nine-millimeter semi-automatic handgun on May  
6                   26th, 2018 here in Cape Girardeau and also guilty  
7                   of Count 2 for felon in possession of a firearm  
8                   for possessing a Smith & Wesson, nine-millimeter  
9                   semi-automatic handgun in Florissant, Missouri.  
10                  Thank you.

11                   THE COURT: Ms. Booth.

12                   MS. BOOTH: Thank you, Your Honor.

13                   Defendant's Opening Statement

14                   MS. BOOTH: There is an old saying,  
15                   and it goes like this: Ignorance is bliss and  
16                   what you don't know can't hurt you, but that is  
17                   not true. Anyone who has lived enough life to  
18                   experience life's ups and downs knows that it is  
19                   critically important at all times to be aware of  
20                   the circumstances of your surroundings. Be alert  
21                   and be aware. Don't get caught off guard,  
22                   because, if you do, the price of ignorance can be  
23                   very, very steep.

24                   Just ask Barrett Swan, because he is  
25                   paying that price right now. Barrett, who is a

1 convicted felon, is on trial for knowingly  
2 possessing two firearms last summer that he did  
3 not know about or intend to control. Because he  
4 wasn't aware and alert of his circumstances he  
5 was in a situation where firearms were present  
6 that he didn't know about.

7 And Barrett, more than anyone,  
8 should always be on guard regarding the presence  
9 of firearms, because 13 years ago at the age of  
10 21 in this very court, federal court, in the  
11 Southeastern Division of Cape Girardeau he  
12 pleaded guilty to possessing a firearm after he'd  
13 been a convicted felon.

14 So Barrett Swan knows that he knows  
15 that he knows that he cannot be in possession of  
16 a firearm. So how is it that he finds himself on  
17 trial today for possessing two of them?

18 We must return to last summer to  
19 learn what the evidence will be in this case.  
20 It's Friday, May 25th of 2018, and everyone is  
21 planning for their Memorial Day weekend plans. A  
22 woman that Barrett is dating, Ebony Stigall, has  
23 made plans for she and Barrett to go to Ebony's  
24 sister's house in Indiana to enjoy the weekend.

25 The plan is to leave for Indiana

1     sometime after Ebony Stigall gets off work on  
2     Friday. Ms. Stigall gets off work early, drives  
3     to Barrett's home and learns that he isn't there.  
4     On this day Ebony is driving Barrett's black  
5     Dodge Charger, and Barrett is driving the car  
6     that he and Ebony plan to take to Indiana, a  
7     rental car.

8                 Barrett isn't home. So Ebony  
9     decides to make good use of her time and run some  
10    last-minute errands before the trip to Indiana.  
11    While doing so and driving the Charger to do her  
12    errands, Ebony is in possession of her  
13    nine-millimeter Smith & Wesson firearm. It's a  
14    handgun that she bought at the sale barn in  
15    Poplar Bluff a few months prior to May 25th of  
16    2018. Ebony grew up in Poplar Bluff, and she  
17    still has family there.

18                When out in public, Ebony Stigall  
19    typically carries her firearm with her in her  
20    car. She is not a convicted felon. And she  
21    knows that she can legally possess a firearm for  
22    protection. Ebony is aware of that though Cape  
23    Girardeau on one hand is a very quiet, rural  
24    Missouri town, a very nice place to live, it also  
25    has its fair share of very violent crime.



1                   Ebony knows that a woman must always  
2                   be alert and aware that she can be grabbed in a  
3                   parking lot, she can be car jacked, or she could  
4                   be pushed inside her own home and assaulted when  
5                   coming home from work and unlocking the door.  
6                   Ebony is not willing to pay the price of  
7                   ignorance regarding her personal safety.

8                   After she finishes her errands,  
9                   Ebony begins to grow increasingly frustrated and  
10                  upset because Barrett still has not returned  
11                  home. As the night wears on, Ebony suspects that  
12                  Barrett is probably out with another woman.  
13                  Ebony has suspected for a long time that Barrett  
14                  is still seeing his ex-girlfriend, a woman by the  
15                  name of Shavion Reed, and sure enough he is.

16                  Ebony receives a text message from  
17                  someone who has spotted Barrett with Shavion on  
18                  the parking lot of a nightclub across the river  
19                  in Illinois where people have gathered to  
20                  socialize. This parking lot is the parking lot  
21                  of a club called The Pony. And after a night  
22                  spot closes in Cape Girardeau, people move over  
23                  across the bridge to socialize in that parking  
24                  lot as that establishment stays open for a long  
25                  time.

1           The nightclub is only about a  
2   15-minute drive from Ebony's location. She jumps  
3   into the driver's seat of Barrett's Dodge Charger  
4   and very quickly makes her way to the nightclub.  
5   Because she is distracted by anger and her need  
6   to catch Barrett red-handed, Ebony forgets to  
7   take her firearm out of the door pocket of the  
8   Charger where she placed it earlier in the day.

9           On any other day Ebony Stigall knows  
10   that she knows that she knows that she cannot go  
11   into Illinois with her firearm. Illinois' gun  
12   laws are very different from Missouri's and  
13   incredibly strict, but on this day, distracted by  
14   anger and the need to confront Barrett if he is  
15   with another woman, she isn't aware and alert  
16   that she's going to Illinois with an unintended  
17   passenger, her firearm.

18           Ebony arrives at the nightclub  
19   parking lot, and she sees Barrett and Shavion  
20   together. Ebony throws the Charger into park,  
21   quickly gets out of the car, confronts Barrett  
22   and lets him know that she will no longer be  
23   played a fool. She is livid. She is hurt, and  
24   she is humiliated. She doesn't want anything  
25   more to do with Barrett.

1                   The keys are in the car that Barrett  
2                   drove to the nightclub, the rental car that had  
3                   intended to go to Indiana, and Ebony drives off  
4                   in that car. As she speeds away, her unintended  
5                   passenger is in Illinois, her firearm remains  
6                   behind in the door pocket of the Charger where  
7                   she left it earlier in the day.

8                   Later that night Barrett drives his  
9                   own car back from Illinois. He drives the  
10                  Charger back across the bridge to Missouri to go  
11                  home. It has been a bad night. Ebony won't take  
12                  Barrett's calls, and Shavion Reed, upon seeing  
13                  Ebony show up, is incredibly angry and now  
14                  realizes that Barrett was seeing Ebony behind  
15                  Shavion Reed's back, and Shavion has exploded on  
16                  Barrett.

17                  So he's drinking from a straight  
18                  bottle of Remy Martin Cognac in the car with him  
19                  because of all the mess he's gotten himself into  
20                  as he's driving across the bridge.

21                  Another car pulls up next to him to  
22                  race. Well, the race is on because Barrett is in  
23                  a bad mood, and that Charger is built for speed.  
24                  It has a Hemi engine in it. All the while  
25                  Barrett doesn't know he isn't riding alone. The

1       unintended passenger is still in the door pocket.

2               As the two cars race into Missouri,  
3       Barrett sees police cars facing the bridge on the  
4       side street on the Missouri side of the  
5       Mississippi River. It's too late. He can't slow  
6       down fast enough, and he blows by the officers'  
7       location at about 100 miles an hour.

8               Barrett knows that there is no way  
9       those police officers just didn't see that  
10      Charger blaze by at fast speed.

11              Barrett has been drinking, and,  
12      though not intoxicated, he knows that he'll  
13      likely blow over the legal limit when those  
14      police officers catch up with him. He doesn't  
15      want another DWI, because he's had a few,  
16      including a felony.

17              So he quickly cuts into a  
18      neighborhood to take side streets hoping that he  
19      can disappear before the red and blue lights of  
20      the police cars are in the rearview mirror.

21              Barrett doesn't get very far. That  
22      Dodge Charger with his Hemi engine may be very  
23      fast, but so are the City of Cape Girardeau's  
24      police cars. Barrett is able to travel about  
25      three blocks without being tailed at all before

1 the police cars follow behind him.

2 He doesn't stop, and the police cars  
3 chase him at a high rate of speed for about half  
4 a mile. He loses control of the Dodge Charger  
5 while making a turn and crashes into an empty  
6 parked car at a curb.

7 He gets out of the car. He tries to  
8 run away, but he doesn't get far. The police  
9 officers approach Barrett. He doesn't resist.  
10 And he goes to jail without incident.

11 When the police search the Charger,  
12 they find the unintended passenger, Ebony  
13 Stigall's firearm. Had Barrett realized that the  
14 gun was in the car, truth be told, he would have  
15 thrown it out the window prior to the police cars  
16 looping in behind him. He knew they were going  
17 to come for him.

18 Barrett knew that he had plenty of  
19 time to get rid of the gun if he knew he had the  
20 gun. And he knows he can't be in possession of  
21 it. He didn't throw the gun out of the window,  
22 because he didn't know it was there.

23 And that is how the summer of 2018  
24 began for Barrett Swan. How it ended concerns  
25 Count 2. After Barrett is arrested for being a

1     felon in possession of a firearm on May 26th of  
2     2018, he spends the summer knowing that it's only  
3     a matter of time before the federal government  
4     chooses to indict him for the matter.

5             Barrett is confident that a federal  
6     indictment is coming just like it did 13 years  
7     prior for the same offense. Barrett knows that  
8     any day and every day is a day when he could be  
9     arrested for the federal arrest warrant. And  
10    that day turns out to be August 1st of 2018.

11            During the early morning hours of  
12    August 1st, Barrett is with his friend Tiara  
13    Thorpe in St. Louis. Barrett has been in  
14    St. Louis for about two weeks. His father is ill  
15    in the hospital up there, so Barrett is staying  
16    in a hotel visiting his father.

17            On this night Barrett is out with  
18    Tiara. It's her birthday. She's wanting to go  
19    out to get his mind off of everything that he's  
20    worrying about. Tiara is driving her car. She's  
21    the driver. Barrett is in the passenger seat.  
22    And she is driving him back to his hotel room in  
23    Florissant, Missouri.

24            They get pulled over for a traffic  
25    violation. Officer Jonathan Kemp, a Florissant

1 police officer, approaches Tiara's window,  
2 informs her of the reason for the traffic stop.  
3 He asks for her identification, insurance and  
4 registration, and she gives all of that to him.

5 When Officer Kemp asks Barrett for  
6 his identification, Barrett said that he did not  
7 have anything physical on him, no driver's  
8 license, but he gives the officer a false name  
9 and false identifying information.

10 When he does this, Tiara Thorpe  
11 looks at Barrett with a very strange look on her  
12 face and asks him why did he just do that? It's  
13 at this moment that Barrett lets Tiara know that  
14 there's probably a federal arrest warrant for  
15 him.

16 He tells her that Officer Kemp will  
17 likely come back to the car and ask for his real  
18 name any minute. If asked for his real name, he  
19 will give it, because he has to face the federal  
20 arrest warrant at some point.

21 Tiara and Barrett sit in the car and  
22 wait for Officer Kemp to return. Officer  
23 Jonathan Kemp returns five minutes later and, as  
24 predicted, asks Barrett for his real name,  
25 because the fake information didn't pan out.

1 Barrett gives Officer Kemp his real  
2 identification. Officer Kemp leaves Barrett and  
3 Tiara in the car again unattended for another  
4 period of time while Officer Kemp returns to his  
5 squad car to check on Barrett's real name.

6 Barrett, knowing that he's going to  
7 be arrested, makes a phone call to Shavion Reed  
8 to tell her that he's been pulled over and that  
9 this is probably the moment he'll be going into  
10 custody, and he patiently waits.

11 As predicted by Barrett, Officer  
12 Kemp returns to the car, tells Barrett there is a  
13 federal warrant for his arrest and asks him to  
14 get out of the car. Barrett gets out of the car  
15 and allows Officer Kemp to make the arrest  
16 without any resistance or hesitation.

17 And at this point a second police  
18 officer pulled up. As Barrett is being placed in  
19 Officer Kemp's police car, the second officer  
20 asks Tiara Thorpe if she has anything illegal in  
21 her car. She said that she has nothing illegal  
22 in her car, but she informs the officers what she  
23 does have, she's in legal possession of her Smith  
24 & Wesson firearm. It's in her console.

25 Tiara has been a victim of violent



1 crime several times in St. Louis, including an  
2 armed carjacking where she was a prosecution  
3 witness. The police officers ask her where her  
4 firearm is located, and she tells them it's in  
5 the console of her vehicle.

6 Tiara hadn't told Barrett that she  
7 was keeping her firearm in the console of her  
8 vehicle, and he didn't know about the presence of  
9 the firearm in the console. Barrett found out  
10 about the firearm's presence when the police  
11 officers found it.

12 When the second officer goes to  
13 Tiara's car to find the firearm in the console,  
14 he can't find it. The console has multiple  
15 compartments. After Tiara explained how to  
16 remove a tray to access the bottom compartment of  
17 the console, the first officer, Officer Kemp,  
18 locates Tiara's firearm. He puts on evidence  
19 gloves and gets the firearm and puts it in an  
20 evidence bag.

21 Tiara protests and asks Officer Kemp  
22 why is he taking her firearm from her? She  
23 purchased it legally at a gun dealer in St. Louis  
24 in 2017. She's told she can't have the firearm  
25 in the car if Barrett is in the car, and she's

1 told to take it up with the authorities at the  
2 police department.

3 According to Officer Kemp, the gun  
4 was found on the passenger seat where Barrett  
5 Swan got out of the car to surrender peacefully  
6 on his federal arrest warrant. According to  
7 Tiara and Barrett, the gun was not on the  
8 passenger seat.

9 Barrett would not sit unattended in  
10 a car for 10 to 15 minutes possessing a firearm  
11 while waiting patiently to be arrested on a  
12 federal warrant. Someone isn't telling the  
13 truth. Officer Kemp, Tiara Thorpe and Barrett  
14 Swan can't all be telling the truth about where  
15 the gun was found.

16 Hard questions will be asked during  
17 the trial of all three, and their answers will be  
18 carefully measured by you. Be alert and remain  
19 aware. Don't miss the truth as it comes to  
20 light.

21 You've now heard what the defense  
22 intends the evidence will be during this trial.  
23 After all the evidence is heard, I will ask you  
24 to return not guilty counts for Barrett Swan.  
25 Thank you.

1                   THE COURT: Ladies and gentlemen,  
2 we'll take our lunch break at this time. You'll  
3 be on your own for lunch. Feel free to visit one  
4 of the downtown restaurants.

5                   But if you would be back here at 1  
6 o'clock, and we'll commence hearing the evidence  
7 in the case shortly after that.

8                   So remember the admonition I've  
9 given you repeatedly. Do not discuss the case  
10 among yourselves or with others or permit anyone  
11 to discuss it in your presence and do not form or  
12 express any opinion about the case until it's  
13 given to you to decide.

14                  So should they come back to the jury  
15 assembly room or up here?

16                  THE COURT CLERK: To the jury  
17 assembly room.

18                  THE COURT: So you're excused at  
19 this time and report back to the jury assembly  
20 room by 1 o'clock.

21                  Thank you. Court is in recess until  
22 1 o'clock.

23                  (A lunch recess was taken at this  
24 time.)

25                  (Proceedings resumed in open court

1 outside the presence of the jury.)

2 THE COURT: Counsel, do you have any  
3 preliminary matters?

4 MR. TILSEN: Just me. I don't think  
5 anybody thinks it's a good idea, but I'm going to  
6 do it anyway, Judge. The next three witnesses  
7 are all law enforcement officers that aren't in  
8 the room. They all have tool belts on. They  
9 have holsters, radios, tasers. I don't know what  
10 else they have. And it's bad enough that they  
11 wear uniforms which gives an air of authority. I  
12 don't think they should be allowed to wear -- I  
13 know they're not allowed to have guns, but they  
14 shouldn't be allowed to wear any of the other  
15 tools that they use. They're just witnesses in  
16 the courtroom.

17 THE COURT: Well, what are they  
18 supposed to wear?

19 MR. TILSEN: Their uniforms if they  
20 want, but not, you know, a billy club or whatever  
21 it is, a radio or a taser.

22 THE COURT: I don't see any problem  
23 with that at all.

24 MR. TILSEN: Okay. The other  
25 suggestion I have is that I'd be curious to know

1     how many jurors were able to actually get lunch  
2     in an hour.

3                   THE COURT:   It is very convenient  
4     for anybody to get lunch in an hour downtown.

5                   MR. TILSEN:   You could ask them.

6                   THE COURT:   No.   I'm not going to  
7     ask them.

8                   The other thing too is there was --  
9     the clerks mentioned there was some contact by  
10    one of the people in the audience from the  
11    Defendant's side with one of the jurors outside.  
12    And if that happens again, I will take some  
13    extreme, immediate action.

14                  MS. BOOTH:   Sir, could you tell me  
15    who that was, so I can make certain that never  
16    happens.

17                  THE COURT CLERK:  I'm not sure which  
18    person it was.

19                  THE COURT:   See if you can get  
20    Michelle.

21                  THE COURT CLERK:  It was me.

22                  THE COURT:   Oh, you mentioned it?

23                  (A discussion was held off the  
24    record.)

25                  THE COURT CLERK:  It was just one of

1 the jurors when they were walking.

2 THE COURT: Let's make a record of  
3 it. Go ahead and tell them.

4 THE COURT CLERK: As the jurors were  
5 walking out, there was a group of either family  
6 or friends standing out there, and one of the  
7 jurors kind of stopped and acted like he was  
8 going to talk to someone. No words were  
9 exchanged.

10 MS. BOOTH: All right.

11 THE COURT CLERK: But I just said,  
12 We need to keep moving. We can't have people  
13 interacting with the jurors. So that was all.

14 THE COURT: Okay.

15 MS. BOOTH: Yes, sir.

16 MR. SORRELL: Which juror?

17 THE COURT: Do you know which juror?

18 THE COURT CLERK: It was the  
19 gentleman I believe that was number -- I don't  
20 know which juror it was anymore. I believe it  
21 was the last one on the top row over here. I  
22 believe the second to last one on the top.

23 MR. SORRELL: In a white jersey?

24 THE COURT CLERK: Yes.

25 MR. TILSEN: Just so it's clear, the

1 interaction you saw was the juror talking to one  
2 of the family members?

3 THE COURT CLERK: There was no  
4 talking.

5 MR. TILSEN: Just attempting to?

6 THE COURT CLERK: Right. Right. He  
7 just stopped and started to say something, and  
8 then I shushed him on along.

9 THE COURT: Okay. Who started to  
10 say something?

11 THE COURT CLERK: The juror.

12 THE COURT: The juror?

13 THE COURT CLERK: Yes, the juror.  
14 Right.

15 MR. SORRELL: Well, Judge, I just  
16 ask that you make him the alternate to ensure  
17 there's no possibility of there being a problem.

18 THE COURT: Well, there wasn't any  
19 exchange, so I'm going to admonish the jurors  
20 again.

21 MR. SORRELL: Okay. Thank you.

22 THE COURT: But, you know, I hate to  
23 do this, but I'm going to clear the corridors to  
24 let them out. You know, I don't want any kind of  
25 exchange whatsoever.

1 MR. SORRELL: Yes. Thank you.

2 THE COURT: So, okay. You can bring  
3 the jurors in.

4 (Proceedings resumed in open court.)

5 THE COURT: The Court has been  
6 advised that there was some interaction between  
7 people in the hall and a member or two of the  
8 jury, and I want to admonish you again, don't  
9 talk to anybody. I mean, don't approach anybody.  
10 Don't make contact of any kind with anybody until  
11 after this case is over; okay?

12 Call your first witness.

13 MS. WOODRUFF: Thank you. The  
14 Government calls Kyle Evans.

15 MR. SORRELL: Your Honor, while  
16 that's going on, may we read a stipulation into  
17 the record?

18 THE COURT: Yes.

19 MR. SORRELL: The parties have  
20 stipulated and have filed a stipulation on file  
21 with the court.

22 It has been agreed to and stipulated  
23 by the parties -- that is, both the Government  
24 and the defense -- that the Defendant, Barrett  
25 Swan, has been convicted of a felony that is a



1 crime punishable by imprisonment for a term  
2 exceeding one year; and, therefore, was a  
3 previously convicted felon under the laws of the  
4 State of Missouri during May 2018 and  
5 August 2018.

6 Second, the Defendant, Barrett Swan,  
7 knew that he had been convicted of a felony that  
8 is a crime punishable by imprisonment exceeding  
9 one year during May 2018 and August 2018.

10 That the firearms listed in the  
11 indictment and described as follows are firearms  
12 as defined by federal statutes that were  
13 manufactured in the State of Connecticut and that  
14 both firearms affected interstate commerce prior  
15 to their discovery in Missouri. Count 1, a Smith  
16 & Wesson model SD9VE nine-millimeter handgun  
17 bearing Serial Number HEM9114. And Count 2, a  
18 Smith & Wesson Model M&P Shield nine-millimeter  
19 semi-automatic handgun bearing Serial Number  
20 LDE1400.

21 The stipulation is signed by myself,  
22 Mr. Swan and Ms. Booth.

23 And with that, Your Honor, the  
24 parties have also agreed that all the exhibits  
25 listed on the Government's exhibit sheet and the

1 Defendant's exhibit sheet are admitted by  
2 stipulation.

3 THE COURT: They'll be admitted  
4 then.

5 MR. SORRELL: Thank you.

6 KYLE EVANS,  
7 being produced and sworn, testified as follows:

8 THE COURT: You may proceed.

9 MR. SORRELL: Thank you.

10 DIRECT EXAMINATION

11 BY MS. WOODRUFF:

12 Q. Would you please state your name.

13 A. Kyle Evans.

14 Q. And how are you employed?

15 A. Through the Cape Girardeau Police  
16 Department.

17 Q. And how long have you generally worked  
18 there?

19 A. For Cape almost four years.

20 Q. And were you in law enforcement prior to  
21 that?

22 A. I was.

23 Q. Where was that?

24 A. In Blytheville, Arkansas.

25 Q. And how long were you in law enforcement

1 then?

2 A. Eighteen months.

3 Q. So you've worked here for the Cape  
4 Girardeau Police Department for a number of  
5 years?

6 A. Yes.

7 Q. And were you working in an employed  
8 capacity as a police officer on May 26th of this  
9 year -- or, I'm sorry, 2018?

10 A. Yes.

11 Q. And also still this year too?

12 A. Both years.

13 Q. And on that date, May 26th, 2018, were  
14 you working on regular patrol?

15 A. Yes.

16 Q. And were you working, what, the  
17 overnight shift?

18 A. Yes. I was on midnights.

19 Q. Would you move that a little bit closer  
20 to you so the jury can be sure to hear you.

21 A. (Witness complies.)

22 Q. Thank you. And you were on midnights?

23 A. Yes.

24 Q. How many people are on your platoon?

25 A. We usually allow 10 if we're running a

1 full shift, but sometimes it will run anywhere  
2 from six to ten depending on whether we have  
3 extra detail on the weekends due it being busy.  
4 It can vary from six officers all the way up to  
5 we've had 20.

6 Q. Sure. And on this particular night you  
7 were working a regular patrol with others that  
8 were in your platoon?

9 A. Yes.

10 Q. And approximately at 3:40 a.m. do you  
11 recall where you were?

12 A. Yes.

13 Q. And where was that?

14 A. I was in the 500-block of South  
15 Frederick and College. The intersection where  
16 College is, Frederick and Middle. In between  
17 Frederick and Middle, but on College if that  
18 makes sense.

19 Q. Well, it makes sense to me but not all  
20 of our jurors are from Cape Girardeau.

21 A. Okay.

22 Q. So can you give them an idea of where  
23 that is in relation to the Mississippi River  
24 bridge?

25 A. So it will be -- the bridge will be

1 Route 146 going to Illinois or Route 74. College  
2 is the immediate north street up there. Even  
3 though it's separated by a grass median you can  
4 still be on College and see the whole bridge.

5 Q. So you were down in an area around the  
6 bridge?

7 A. Yes.

8 Q. Obviously on the Missouri side?

9 A. Yes.

10 Q. And were other officers there at the  
11 time?

12 A. Were other officers with me?

13 Q. With you.

14 A. Yes.

15 Q. Who else was there?

16 A. There was an Officer Yoder and an  
17 Officer Brotz.

18 Q. And were all of you dressed as you are  
19 today in full police uniforms?

20 A. Yes.

21 Q. And were you in a fully marked patrol  
22 car?

23 A. Yes.

24 Q. And what were you doing down there?

25 A. We were -- there was a previous call

1 we'd had, and we'd cleared that call, and we were  
2 talking about that call. It was shots fired call  
3 down there. It didn't have -- it wasn't in  
4 reference to this or anything, but that's where  
5 we were. We just happened to be there, and we  
6 talked about it.

7 Q. So you cleared one call, and then you  
8 were just congregating there as you were talking  
9 about that previous call?

10 A. Correct.

11 Q. And did something catch your attention?

12 A. Yes.

13 Q. That was that?

14 A. That a dark colored vehicle in the  
15 driving lane coming over the Illinois bridge at a  
16 high rate of speed.

17 Q. So what was it that first caught your  
18 attention? Was it the sound, or did you see it?

19 A. I could hear it. I could hear the  
20 vehicle. And then I saw it almost  
21 simultaneously.

22 Q. And when you say you could hear it, what  
23 was it that drew your attention?

24 A. The sound of a car accelerating.

25 Q. Going pretty fast?

1 A. Yes.

2 Q. And then what happened then?

3 A. I got on the radio. I estimated its  
4 speed was close to 100 when I radioed. And I  
5 immediately went to where it was at and went on  
6 Frederick, which is I was in between Frederick --  
7 and so when I went on Frederick going northbound,  
8 I don't know the other street -- sorry.

9 Q. I do have a map. It's marked as  
10 Government's Exhibit 10. It's already been  
11 admitted. You should be able to see it there on  
12 your screen. Do you see that?

13 A. I can, but I don't know if I can read  
14 it.

15 (Government's Exhibit No. 10, Aerial  
16 Map, was identified.)

17 BY MS. WOODRUFF:

18 Q. Well, they have it on their screen as  
19 well right in front of them, and then there is a  
20 large television screen there. Can you point out  
21 where the area is, basically the Mississippi  
22 River bridge.

23 A. So 74 -- is this a touch screen?

24 Q. Is this the bridge right here? I can  
25 point to it.

1 A. Okay. Yes.

2 Q. And you were in the area close to the  
3 bridge?

4 A. Correct. I was right here.

5 Q. If you make a mark on your screen, it  
6 will show up on the other screens.

7 A. Okay. I believe I was right there.

8 Q. You were that close to 74?

9 A. Well, College runs right there.

10 Q. And that's where you guys were initially  
11 congregated?

12 A. Correct.

13 Q. So then you see this dark colored car  
14 coming off the bridge, and I think you were  
15 describing the direction of travel that you took.

16 A. Yes. So I went immediately a short  
17 distance west, and then I went north on  
18 Frederick, which is right here.

19 Q. And that's the direction that you  
20 traveled in?

21 A. Yes.

22 Q. And then --

23 A. Down Morgan Oak west. It's hard for me  
24 to see the screen. I believe that's Morgan Oak  
25 right -- the first one.



1 Q. So are you basically traveling parallel  
2 to the direction of the speeding car?

3 A. Well, yes. When I went west and we're  
4 both going on 74 and then we're both parallel to  
5 each other northbound.

6 Q. Okay. So at some point were you able to  
7 catch up with the motor vehicle?

8 A. Yes.

9 Q. And when I say "catch up," were you  
10 right behind them?

11 A. On distance wise I would say 10 to 15  
12 car lengths.

13 Q. Were there any cars between you and the  
14 car that you were pursuing?

15 A. No.

16 Q. And is it fair to say you got a better  
17 look at what that motor vehicle looked like now?

18 A. I'm sorry?

19 Q. Could you get a better look at what the  
20 motor vehicle looked like?

21 A. Yes.

22 Q. And what was its approximate make?

23 A. It was a Dodge Charger.

24 Q. And it was the same car you saw coming  
25 off the bridge?

1           A. It was a dark colored vehicle. I mean,  
2 at that distance I couldn't for certain say that  
3 it was a Dodge Charger on top of the Illinois  
4 bridge.

5           Q. Did you believe that it was the same  
6 car?

7           A. Yes.

8           Q. Otherwise why are you following it;  
9 right?

10          A. At 3:40 in the morning there's no  
11 traffic.

12          Q. So at some point were you able to get  
13 close enough to see the license plate?

14          A. Yes.

15          Q. And did you realize at some point that  
16 you were familiar with that car?

17          A. I did.

18          Q. Where was that?

19          A. We were about Morgan Oak and Pacific,  
20 which is maybe a block and a half from where I  
21 began to read out the plate.

22          Q. So can you point on the screen there for  
23 the jury where you were when you realized you  
24 recognized the car.

25          A. The -- so the words on here are really

1 blurred. I'm not really clear on what is on the  
2 screen.

3 Q. Can you read them?

4 A. I cannot.

5 Q. Okay.

6 A. I want to circle Good Hope, and I don't  
7 want to get the wrong street. We were at Morgan  
8 Oak, and it was not Pacific, but I can't tell if  
9 that's Good Hope or not.

10 Q. Okay. So at some point you --

11 A. I believe that it would be right here  
12 where I'm circling, because that looks like Good  
13 Hope that's above it northbound, because it has a  
14 quick J, so I believe this would be it what's  
15 circled.

16 Q. How did you recognize the car?

17 A. So I have seen the car multiple times.  
18 It's in the same neighborhood that I've lived in  
19 for an extended period of time. It might have  
20 been a year.

21 Q. And did you associate that car with a  
22 specific person?

23 A. I did.

24 Q. And who was that person?

25 A. It was Barrett Swan.

1 Q. Do you see Mr. Barrett Swan in the  
2 courtroom today?

3 A. Yes.

4 Q. Could you point to him and describe what  
5 he's wearing for the record?

6 A. He's at the defense table with the  
7 blue-collared shirt.

8 MS. WOODRUFF: Your Honor, I'd ask  
9 the record reflect the witness has identified the  
10 Defendant.

11 THE COURT: The record will so  
12 reflect.

13 BY MS. WOODRUFF:

14 Q. And so is it fair to say at this point  
15 you recognize the car, but you can't tell who's  
16 in it?

17 A. No.

18 Q. And are you still traveling at a high  
19 rate of speed?

20 A. Over the posted speed limit, yes.

21 Q. And is the Dodge Charger still traveling  
22 at a high rate of speed?

23 A. Correct.

24 Q. At what point do you turn on your  
25 overhead lights to conduct a speeding stop?

1           A. I think it was real close to the area of  
2 where I've got circled here, and it might have  
3 been just before that area, or within one or two  
4 seconds of that intersection.

5           Q. And when you turned on your lights, did  
6 you turn on your sirens as well?

7           A. That probably took another two seconds,  
8 but --

9           Q. When you turned on your lights, did the  
10 car immediately pull over?

11          A. It did not.

12          Q. What happened?

13          A. So the car failed to yield going  
14 northbound up to -- it went past Good Hope going  
15 northbound. This is Good Hope right here. Good  
16 Hope jumps onto a couple of hills right here, and  
17 it's also right here. So he took Good Hope, and  
18 then I went westbound. And I believe this will  
19 be Henderson.

20                 And then that may be the next one. I  
21 can't read the -- I don't know if that's either  
22 Henderson or Park. I believe the next one is  
23 Park. So that's Henderson. And that's where the  
24 vehicle tried to turn southbound, and it hit  
25 another vehicle.

1 Q. So you are pursuing the vehicle at this  
2 point?

3 A. Yes.

4 Q. And at some point you turn on your  
5 sirens?

6 A. Yes.

7 Q. You have on your overhead police lights,  
8 those red and blue lights?

9 A. Yes.

10 Q. And the vehicle is not stopping?

11 A. Correct.

12 Q. And how fast were you going? Is that a  
13 residential neighborhood?

14 A. It is.

15 Q. Do you know about how fast you were  
16 going?

17 A. I estimated to be around 70.

18 Q. What's the speed limit there?

19 A. I believe all our residential is 30.

20 Q. And so you already mentioned this corner  
21 of Henderson and Good Hope. And what happened at  
22 that corner?

23 A. The vehicle attempted to turn  
24 southbound, and I've got it marked here. It's a  
25 little slope. It hit a parked vehicle.

1 Q. So that Charger struck a parked vehicle?

2 A. Yes.

3 Q. And did it cause it to come to a stop?

4 A. I don't know if that did or if there was  
5 braking involved, but it stopped.

6 Q. Okay. And did you see the collision?

7 A. I did.

8 Q. So once you see the collision, what are  
9 you doing?

10 A. Radioing. I don't know if somebody is  
11 on the radio, but I don't know. I didn't listen  
12 to the radio. I usually call in a 1015. Then  
13 I've got -- I'm in full pursuit. Sometimes we  
14 don't have that authority to do that.

15 Q. So for those of us who are not police  
16 officers, what does 1015 mean?

17 A. I'm sorry. It means a motor vehicle  
18 accident.

19 Q. And so you see this accident, and then  
20 so you're right there on the scene when it  
21 happens?

22 A. Yes.

23 Q. What happens then?

24 A. I see a black male drive -- jump out of  
25 the car and get out of the driver's seat, and he

1 leaves the vehicle with the door wide open. It  
2 took me approximately -- I didn't know who was  
3 driving at the time. Yet it took me -- I'm  
4 sorry?

5 Q. So you see somebody get out of the  
6 driver's seat?

7 A. Yes.

8 Q. Describe that person.

9 A. It took me one second approximately to  
10 know it was Barrett Swan.

11 Q. And so it took you a second to process  
12 that's who that was?

13 A. Uh-huh, yes.

14 Q. Is that a yes?

15 A. Yes. Sorry.

16 Q. Are you out of your car by now?

17 A. Yes.

18 Q. And so you can see how far away he is  
19 from you?

20 A. 20 -- maybe 20, 30 feet.

21 Q. And when you see him get out of the  
22 driver's side car door, does he leave the  
23 driver's car door open? Then what happens?

24 A. Yes. I yell out his first name.

25 Q. Barrett?



1           A.    Correct.    And he looks back at me.    I  
2   give demands to stop, and he continues to run.

3           Q.    I assume away from you?

4           A.    Correct.

5           Q.    He's not running towards you; right?

6           A.    He did not.

7           Q.    So when he runs away from you, what did  
8   do you do?

9           A.    I radio over running southbound.    I knew  
10   that he was running into an alleyway that was  
11   just west from where we were.    We went through a  
12   gate.    I don't know if we jumped it or not.    It  
13   might have been open.    We continued to run past  
14   Bloomfield.

15                   We got to where there's like smaller  
16   houses there, almost shotgun houses.    So that I  
17   saw him in the backyard, and I believed he was  
18   turning around to maybe run -- you know, the  
19   common thing is to elude police, to run circles,  
20   not to continue to just run south since they may  
21   be getting tired.    So he made a loop, and I  
22   radioed that he was coming back from northbound  
23   on Bloomfield, and that's when one of the other  
24   officers intervened on Bloomfield.

25           Q.    Because as you were doing this, were you

1 radioing to other officers to let them know  
2 what's going on?

3 A. Yes.

4 Q. And were you radioing your location?

5 A. Yes. They knew the -- I believe they  
6 knew the location.

7 Q. So after he got out of the driver's side  
8 door, did he leave the driver's side door open?

9 A. Yes.

10 Q. When you chased him on foot, were you  
11 able to see inside that front passenger  
12 compartment of the car?

13 A. I can see the passenger compartment and  
14 where the driver was.

15 Q. Was there anybody else in there?

16 A. Not in the front, no.

17 Q. And so this is all happening very fast?  
18 Is that a yes?

19 A. Yes.

20 Q. Is it fair to say you can't see the  
21 backseat?

22 A. Yes. I cannot see anything within the  
23 rear of the car.

24 Q. So then you chase him, and he starts to  
25 double back and other officers are arriving on

1 scene to assist?

2 A. Yes.

3 Q. Now, where was he eventually taken into  
4 custody?

5 A. I believe custody was on the opposite  
6 side of Bloomfield. I believe it was at the  
7 intersection -- I don't want to -- I believe it  
8 was one house off of Bloomfield, I believe, in  
9 the backyard on the opposite side of where -- so  
10 he circled out on the south side of Bloomfield,  
11 but he was taken into custody at the house on the  
12 north side of Bloomfield, but it was just like  
13 immediate on the other side. Was that clear  
14 enough to give that account?

15 Q. How far away from the crash?

16 A. It couldn't have been more than  
17 50 yards. It was less than that.

18 Q. So it was all very fast; is that  
19 correct?

20 A. Yes.

21 Q. So if you see this car coming across the  
22 bridge at 3:40 a.m., which you already testified  
23 to, do you recall what time he was taken into  
24 custody?

25 A. I would estimate about three minutes.

1 Q. So it was all very, very fast, the  
2 seeing him, the pursuit, and the running, all of  
3 it within about three minutes?

4 A. Yes.

5 Q. And there was another officer who found  
6 this hiding spot and took him into custody?

7 A. Yes.

8 Q. Is that Sergeant Edwards?

9 A. Yes. I believe it was Corporal Edwards  
10 at the time. So it may have listed corporal in  
11 the report, but yes.

12 Q. He's a sergeant now?

13 A. Yes.

14 Q. And you then returned to where you left  
15 your car there at the scene of the crash?

16 A. Yes.

17 Q. And I want to show you what's recently  
18 been admitted as Government's Exhibit 1. I know  
19 that's very dark. But can you point out for the  
20 jurors what they're seeing here.

21 A. So we've got back here Good Hope. Back  
22 here is where the street is at. This is  
23 Henderson right here. This will be the lane on  
24 Henderson. The vehicle goes off the roadway and  
25 we're this way, which is facing south.

1                   So the vehicle attempts to turn south,  
2                   and he misses his lane, obviously, and flies  
3                   off -- the vehicle flies off in this lane, and he  
4                   hits this parked vehicle that's back here, which  
5                   I can see back there.

6                   So I did notice the -- there's the door  
7                   that's open. I can't see anything other than  
8                   that. I probably -- not probably. I ran right  
9                   through here. I was going to -- I never hit  
10                  grass, so I didn't get -- I was only on pavement  
11                  when I ran. I went to cross. I didn't see  
12                  anything obvious, no persons anywhere concerned  
13                  about somebody pursuing us and trying to hurt us.  
14                  That was my immediate concern. And then I  
15                  refocused back on the driver.

16                               (Government's Exhibit No. 1, Photo,  
17                   was identified.)

18                  BY MS. WOODRUFF:

19                  Q.    Okay. So the dark-colored vehicle we  
20                  see in the foreground, is that Mr. Swan's car?

21                  A.    Yes.

22                  Q.    And then the one that's barely visible  
23                  there, a little bit in the distance in front of  
24                  Mr. Swan's car, that's the car that he struck?

25                  A.    Yes.

1 Q. I'm going to show you a little better  
2 picture which has already been admitted as  
3 Government's Exhibit 2. A little clearer; right?

4 A. Yes.

5 (Government's Exhibit No. 2, Photo,  
6 was identified.)

7 BY MS. WOODRUFF:

8 Q. So we can see that open driver's side  
9 door of Mr. Swan's car?

10 A. Yes.

11 Q. Is that how you left it when you got  
12 out?

13 A. Yes.

14 Q. And then that tan-colored car in front,  
15 is that the parked car that he struck?

16 A. Yes.

17 Q. Now, I understand you didn't have  
18 anything to do with the evidence collection in  
19 this case --

20 A. I did not.

21 Q. -- other than you ran a trace on a  
22 firearm that was located in Mr. Swan's car?

23 A. I did.

24 Q. And that's called an ATF trace?

25 A. Yes.

1 Q. And is that something that you normally  
2 do when guns are recovered?

3 A. Yes.

4 Q. And did you receive a response back?

5 A. I did.

6 Q. I'm going to show you what's previously  
7 been marked and admitted as Government's  
8 Exhibit 13. I'm going to move it down here a  
9 little bit for you.

10 Is that your name there at the top --

11 A. Yes.

12 Q. -- as requesting officer?

13 A. Yes.

14 (Government's Exhibit No. 13, Trace  
15 Report, was identified.)

16 BY MS. WOODRUFF:

17 Q. And can you explain to the jury what  
18 this trace report tells you.

19 A. I don't know a whole lot honestly about  
20 when we get firearms back where -- you know, this  
21 is more of a follow-up process. I know it will  
22 tell you like where it was purchased last, where  
23 it was -- I don't know if that's just -- you can  
24 ask, you know, where it was legally purchased at.  
25 I don't even know if that's what it amounts to.

1 I know that it was bought at Instapawn in Poplar  
2 Bluff, and they traced it back to there.

3 Q. Okay. So we can see here on the screen  
4 where it was purchased at Instapawn in Poplar  
5 Bluff?

6 A. Yes.

7 Q. And then it shows the person who  
8 purchased that was Steven Fowler?

9 A. Correct.

10 Q. Obviously not Barrett Swan --

11 A. Correct.

12 Q. -- or anybody else? It was Steven  
13 Fowler listed as the owner --

14 A. At this date in time, yes, he was.

15 Q. -- when you recovered the gun and it was  
16 run through ATF; correct?

17 A. Yes.

18 Q. Did all of this occur within Cape  
19 Girardeau?

20 A. Yes.

21 Q. That's within the Eastern District of  
22 Missouri?

23 A. Yes.

24 MS. WOODRUFF: No further questions.

25



CROSS-EXAMINATION

BY MS. BOOTH:

Q. Officer Evans, good afternoon.

A. Hi.

Q. Just a few moments ago we were working with Government's Exhibit No. 1, a map. I have a similar map, so I'm going to put it down on the machine to see if we're able to see the street names better over the machine. If not, I'll ask the Judge if I can physically approach you and then you can look at this piece of paper.

A. Okay.

(Defendant's Exhibit No. A, Map, was identified.)

BY MS. BOOTH:

Q. This is Defendant's Exhibit A. Are you able to see street names on this, Officer Evans?

A. Yes, I can see them better.

Q. All right. And this map is similar to the one that we just viewed of the Government's; correct?

A. Yes.

Q. All right. But it's, I guess, a higher up view. We see here where I'm pointing this is the Mississippi River; correct?

1 A. Yes.

2 Q. All right. And this is Highway 74.  
3 It's crossing over the Mississippi River and  
4 proceeding into Cape Girardeau; correct?

5 A. Yes.

6 Q. Okay. Now, are you familiar with a  
7 nightclub that's located immediately across the  
8 river in Illinois called The Pony?

9 A. I am.

10 Q. Okay. Is it fair to say that The Pony  
11 is just immediately across the bridge over more  
12 in this area, but it's pretty much right across  
13 the bridge; correct?

14 A. It's in Illinois across the bridge. I  
15 don't know the exact distance.

16 Q. Would you say about five minutes across  
17 the bridge once you get into Illinois?

18 A. It's not five minutes, no.

19 Q. Maybe two minutes?

20 A. It may not even be two minutes.

21 Q. Okay. So The Pony is right there right  
22 as you get off the bridge in Illinois; is that  
23 fair to say?

24 A. Yes.

25 Q. Officer Evans, you were located on

1 College Street where I'm pointing on the map;  
2 correct?

3 A. Yes.

4 Q. And you were parked there in your patrol  
5 car with some other officers?

6 A. Yes.

7 Q. And the other officers that were there,  
8 who else was parked right there on College  
9 Street?

10 A. So it was me, Officer Yoder, and now --  
11 they're all there now with me, Officer Yoder and  
12 Officer Brotz.

13 Q. And your car is positioned on College  
14 Street that you are actually facing east so you  
15 can see the traffic coming across this bridge;  
16 correct?

17 A. I was out of my vehicle.

18 Q. Okay.

19 A. I'm not positive which way my vehicle  
20 was facing.

21 Q. That's all right. Just so long as you  
22 were facing east.

23 A. Yes. I was out of my vehicle.

24 Q. Okay. And briefly this car is parked  
25 there on College Street?

1 A. Yes.

2 Q. Was your light bar activated or  
3 headlights and taillights on?

4 A. I believe my headlights and taillights  
5 were working, yes, ma'am.

6 Q. How about the other police cars, what  
7 were the lights on those cars like?

8 A. I don't know. They were not in an  
9 emergency vehicle at the time.

10 Q. But headlights and taillights on?

11 A. Yes.

12 Q. And you saw this black car proceeding  
13 from Illinois on the bridge; correct?

14 A. Yes.

15 Q. And where would you say you first  
16 noticed it? Would it be more with where my  
17 finger is or a little bit more back on the  
18 bridge?

19 A. More east.

20 Q. More east?

21 A. From there I can almost see the Missouri  
22 line.

23 Q. Oh, all right.

24 A. Or I can't really see the Missouri line.

25 Q. So would you say my finger is right here

1 is where you noticed that black car speeding into  
2 Missouri?

3 A. It would have been probably further east  
4 than that. Maybe it would have been through  
5 there.

6 Q. All right. If I put a mark here where  
7 my finger is, is that fair?

8 A. Yeah, I believe so.

9 Q. All right. So this black car is  
10 speeding into Missouri as you said at a very high  
11 rate of speed; correct?

12 A. Yes.

13 Q. And when you noticed this, you decide  
14 that you are going to proceed north and try to  
15 intercept this car; correct?

16 A. Yes.

17 Q. And so our jury can understand, if  
18 you're located on College Street, there's a fence  
19 in the median here, you just can't pull your  
20 police car out on Highway 74?

21 A. Correct.

22 Q. Okay. And from your location you saw  
23 this car proceed and make a right up Sprigg  
24 Street?

25 A. Yes.

1           Q.   Okay.   So when you notice this black car  
2   make a right and go up Sprigg Street, you tried  
3   to intercept it, and you know the best way for  
4   you to proceed is to proceed north; correct?

5           A.   Correct.

6           Q.   And then you went up to this street  
7   here, which is Morgan Oak; correct?

8           A.   Yes.

9           Q.   Do you know if you went up Frederick or  
10   if you went up South Middle?

11          A.   I went up Frederick.

12          Q.   So this is you going up to Morgan Oak.  
13   And you immediately proceed west on Morgan Oak  
14   and attempt to catch up with that black car;  
15   correct?

16          A.   Correct.

17          Q.   I'll show you going west.   And the black  
18   car had proceeded up north on Sprigg and then had  
19   gone left, which is west on Morgan Oak?

20          A.   Correct.

21          Q.   And you caught up with the black car  
22   would you say at Morgan Oak and South Pacific?

23          A.   Correct.   I don't know what -- I'm close  
24   enough to read the plate which was almost at  
25   Morgan Oak and Pacific if that's considered

1 catching up.

2 Q. So I'll go ahead and draw the path of  
3 the black car. Then, of course, you're right  
4 behind it. So then the black car went north on  
5 South Pacific, correct, onto Good Hope?

6 A. Correct.

7 Q. And then Good Hope swings to the east --  
8 I'm sorry, the west; correct?

9 A. Yes. To the west.

10 Q. And then the black car basically tries  
11 to make the turn on Hanover and crashes; correct?

12 A. Correct. And you said Hanover? It's  
13 Henderson.

14 Q. I'm sorry. Henderson. I'm sorry.  
15 You're right, sir. I'm sorry. Henderson.

16 A. Okay.

17 Q. And then, of course, you're in hot  
18 pursuit the whole way.

19 So, Officer Evans, from College through  
20 here where the police officers were located to up  
21 to the area where you caught up with the black  
22 Charger no police officer was behind the Charger  
23 for these blocks; correct?

24 A. Until -- correct. Until those are close  
25 to intersecting.

1 Q. Okay. So can you point on the map where  
2 the police cars got behind the black Charger?

3 A. The black Charger might have been right  
4 here while I was maybe here.

5 Q. Let me see here. So right about here is  
6 where you would have caught up with the black  
7 Charger; correct?

8 A. Correct.

9 Q. All right. Sir, I'm going to mark that  
10 on our map. So, again, this space here that the  
11 Charger travels it's all on its own not  
12 accompanied by any police car behind it; correct?

13 A. Correct.

14 Q. All right. Officer Evans, again, how  
15 many years have you been a police officer?

16 A. It's around five now.

17 Q. So certainly you're not a novice. You  
18 have lots of experience pursuing people in cars  
19 as they're trying to flee from the police;  
20 correct?

21 A. I have a lot for sure.

22 Q. Yes, sir. It's not uncommon for people  
23 to start throwing contraband out the window as  
24 you're pursuing them; correct?

25 A. It does happen.



1           Q.   So you've been trained you always have a  
2   keen eye to see if anything is going to fly out  
3   the window; correct?

4           A.   Yes.   That's a secondary.   Safety is our  
5   first, but the secondary is items getting thrown  
6   out.

7           Q.   Yes, sir.   And I believe you testified  
8   on Direct that you were familiar with this black  
9   Dodge Charger; correct?

10          A.   Yes.

11          Q.   And you live in the same neighborhood  
12   that Mr. Swan lives in or is it that his  
13   girlfriend lives in?

14          A.   I don't know who the owner of the home  
15   is or if it was a rental, but that vehicle was  
16   there consistently, and Barrett was driving it  
17   consistently.

18          Q.   All right.   So you live in a  
19   neighborhood in Cape Girardeau; correct?

20          A.   Correct.

21          Q.   And there's a home in the neighborhood  
22   where you would see Barrett and his car  
23   frequently parked?

24          A.   Correct.

25          Q.   Is this home right across the street

1 from you?

2 A. Yes.

3 Q. So you'd see it all the time, and that  
4 car was typically there?

5 A. Yes.

6 Q. And, again, you don't know whose home  
7 that may be?

8 A. I don't know if it's a rental. I'm  
9 assuming it's a rental because there's other  
10 people that live there, but that's just an  
11 assumption.

12 Q. Officer Evans, I'm going to show you  
13 Defendant's Exhibit B. This is, of course, an  
14 identical copy of one of the Government's  
15 exhibits you just looked at.

16 So Mr. Swan jumps out of the car, he  
17 doesn't miss a beat, and he takes off running; is  
18 that accurate?

19 A. Correct.

20 (Defendant's Exhibit No. B, Photo,  
21 was identified.)

22 BY MS. BOOTH:

23 Q. And you never saw Mr. Swan reach for the  
24 door pocket of the car door; correct?

25 A. I did not.

1 Q. You never saw him hesitate in any way  
2 around the door?

3 A. There was no hesitation.

4 Q. He just took off running?

5 A. Correct.

6 Q. Officer Evans, was it your call to call  
7 an evidence technician to take photographs of the  
8 scene, or was that some other officer's  
9 responsibility?

10 A. I believe I made the call.

11 Q. And was it your decision to direct the  
12 evidence technician as to where to focus his  
13 photographs, or would that have just been left  
14 with him, and I speak to him when he testifies?

15 A. They go to separate specialized training  
16 to make sure they get what they need, so I  
17 couldn't speak on his behalf. He knew a general  
18 idea of what I needed photographed.

19 Q. And you wrote a police narrative in this  
20 case; correct?

21 A. Yes.

22 Q. And then you were also the police  
23 officer that wrote the probable cause statement  
24 for Mr. Swan's arrest; correct?

25 A. Yes.

1 Q. And a probable cause statement is what's  
2 handed to the judge to get a warrant for  
3 someone's arrest; correct?

4 A. Correct.

5 Q. Would you say then that you're the lead  
6 investigating officer on this matter?

7 A. It was my traffic stop, yes.

8 Q. And you brought your police narrative  
9 with you here today?

10 A. I did.

11 Q. And when you got back to the station on  
12 May the 26th, it's fair to say too that your  
13 first order of business was to write down  
14 everything you could remember from this event;  
15 correct?

16 A. From the time allotted. I don't know  
17 what other calls were coming in, but, yes, it  
18 needed to be done before the shift ended.

19 Q. Yes. And you completed your report on  
20 May 26th; correct?

21 A. Yes.

22 Q. The same day that this happened?

23 A. Correct.

24 Q. And I see that you signed your name to  
25 the bottom of your report?

1 A. Yes.

2 Q. And signed your name?

3 A. Yes. On the -- it may not show it on  
4 these print-offs, but on my original that's in  
5 our records they are signed.

6 Q. And that's to say that you have verified  
7 it and everything is accurate?

8 A. Yes.

9 Q. Thank you, Officer Evans.

10 A. Thank you.

11 THE COURT: Any redirect?

12 MS. WOODRUFF: No, no redirect.

13 THE COURT: You may step down.

14 THE WITNESS: Do I need to clear the  
15 screen?

16 THE COURT: She can do it.

17 (Witness Excused.)

18 THE COURT: Call your next witness.

19 MS. WOODRUFF: The Government calls  
20 Sergeant Rodney Edwards.

21 RODNEY EDWARDS,  
22 being produced and sworn, testified as follows:

23 THE COURT: You may proceed.

24 MS. WOODRUFF: Thank you.

25 DIRECT EXAMINATION

1 BY MS. WOODRUFF:

2 Q. Would you please state your name.

3 A. My name is Rodney Edwards. Sorry.

4 Q. Okay. How are you employed?

5 A. The City of Cape Girardeau Police  
6 Department.

7 Q. How long have you been a police officer?

8 A. 23 years.

9 Q. And were you so employed working in your  
10 capacity as a police officer for Cape PD on  
11 August 26th, 2018?

12 A. Yes, I was.

13 Q. And were you just on regular patrol that  
14 night?

15 A. I was, yes.

16 Q. And around 3:40 a.m. was there a call  
17 that came out that caught your attention?

18 A. There was, yes. I responded to the area  
19 of Morgan Oak and Lorimer for a shots fired call.  
20 We were trying to determine the origin of where  
21 that incident took place.

22 And while I was in that area, I  
23 overheard Patrolman Evans on the radio state he  
24 was observing a Dodge Charger at a high rate of  
25 speed on the roadway.

1 Q. Did you have a direction of travel for  
2 that vehicle?

3 A. I don't know if initially he gave the  
4 direction of travel out, but ultimately I saw the  
5 vehicle.

6 Q. Okay. Go ahead and just describe for  
7 the jury what happened next.

8 A. Well, as I was going west on Morgan Oak  
9 and as I was proceeding towards Sprigg Street, I  
10 saw Patrolman Evans exit off Frederick Street and  
11 also travel west on Morgan Oak. About the same  
12 time I then saw the Dodge Charger turn west on  
13 Morgan Oak from Sprigg.

14 Q. I know that's a lot of directions. Is  
15 it fair to say that you saw Officer Evans in  
16 pursuit of a Dodge Charger?

17 A. Ultimately, yes.

18 Q. Okay. Did you participate in that  
19 pursuit?

20 A. I did.

21 Q. And where were you in relation to the  
22 order of cars?

23 A. Behind the Dodge Charger was Patrolman  
24 Evans, and then I was about one or two blocks  
25 behind him in a secondary unit.

1           Q. And are you trying to catch up, or are  
2 you just keeping a safe distance, or what's going  
3 on?

4           A. At that time we're on certain streets  
5 through the City, so I'm basically just trying to  
6 keep up eyesight of Patrolman Evans.

7           Q. Did you have lights and siren on?

8           A. Yes.

9           Q. And that kind of signals everybody else  
10 to stay away or stop and things of that nature  
11 for public safety?

12          A. Correct.

13          Q. And what happens then?

14          A. As we continue to follow the vehicle,  
15 it's gone north on Pacific and then west on Good  
16 Hope Street. And when I approached the  
17 intersection of Good Hope and Henderson, I saw  
18 that the Charger apparently had been involved in  
19 an accident.

20          Q. Okay. So you were far enough back that  
21 you couldn't actually see the collision; is that  
22 fair?

23          A. That's correct.

24          Q. So when you arrived on scene, the  
25 collision had already occurred?



1 A. Correct.

2 Q. What did you see when you got right  
3 there?

4 A. What I saw was a black male wearing his  
5 hair in multiple dreads, long dreads running from  
6 the driver's side vehicle.

7 Q. The Dodge Charger vehicle?

8 A. Correct.

9 Q. Where was Patrolman Evans?

10 A. He was chasing after the suspect.

11 Q. Was he already out of his car?

12 A. Yes.

13 Q. So you were still in your patrol car?

14 A. At this time, yes.

15 Q. Okay. So you don't see the collision,  
16 but you actually see the driver bale out and run  
17 off?

18 A. Correct.

19 Q. All right. And what happens then?

20 A. I basically just stay in my patrol car  
21 and follow both the male and the driver and  
22 Patrolman Evans. And at some point the male runs  
23 east into an alley off of Henderson with  
24 Patrolman Evans was still chasing him on foot.

25 So I drive through the same alley. And

1 as we're -- as I'm going through the alley, the  
2 male and Patrolman Evans then goes south through  
3 the yards of the houses.

4 Q. How far away are you from the scene of  
5 the crash?

6 A. At this point?

7 Q. Yes.

8 A. Probably 50 yards.

9 Q. So you're still pretty close?

10 A. Yes.

11 Q. And then what happens?

12 A. So I continue -- I stay in my car. I  
13 continue through the alley and then come out on  
14 Hanover Street. I make a right onto Hanover and  
15 go to the corner of Bloomfield and Hanover, which  
16 is the start of the 1100 block. And as I go west  
17 on the street, I then see the same individual  
18 from the car, the Charger, now heading north  
19 across Bloomfield.

20 Q. And you're still in your car?

21 A. Yes.

22 Q. And what then?

23 A. Then I stopped my car. And about the  
24 same time I see the same individual run to the  
25 east side of the corner house, which was 1118

1 Bloomfield. And I temporarily sighted him. I  
2 exited my car. I go to the same location where I  
3 last saw him.

4 And at the side of this house not  
5 exactly up against the house, but about 5 feet  
6 off the house is kind of a brush line of vines  
7 and some heavy growth, and I found the male  
8 hiding in that growth.

9 Q. So in some tall shrubs or tall grass or  
10 something?

11 A. Not necessarily grass, but it was kind  
12 of a vining up against a chain link fence. Just  
13 weeds.

14 Q. When you say hiding, was he crouching  
15 down or what?

16 A. I believe he was crouched down, yes.

17 Q. And what do you do then?

18 A. I then ordered him to the ground, and I  
19 take him into custody and handcuff him.

20 Q. And do you have your service revolver in  
21 your hand at that time?

22 A. Yes, I do.

23 Q. So you're approaching him at gunpoint?

24 A. Yes.

25 Q. And you give him some orders, and he

1 follows?

2 A. I'm sorry?

3 Q. You give him some orders, and he obeys  
4 those orders?

5 A. Yes, he does.

6 Q. And do you see that man in the courtroom  
7 today?

8 A. I do.

9 Q. Can you please point to him and describe  
10 what he's wearing for the record?

11 A. He's wearing a blue dress shirt, and  
12 he's at the defense table.

13 Q. Thank you.

14 MS. WOODRUFF: Your Honor. I would  
15 ask the record reflect the witness has identified  
16 the Defendant.

17 THE COURT: The record will so  
18 reflect.

19 BY MS. WOODRUFF:

20 Q. And that's Mr. Barrett Swan?

21 A. Correct.

22 Q. And that's the man that you saw running  
23 from the driver side door of that Dodge Charger?

24 A. Yes, it is.

25 Q. And that's the man you found hiding in

1 the tall brush there beside the house on  
2 Bloomfield?

3 A. Yes.

4 Q. And that's the man that you took into  
5 custody and placed under arrest?

6 A. Yes, it is.

7 Q. Did you have a gun drawn at that time?

8 A. Yes.

9 Q. And you didn't find anything illegal on  
10 his person?

11 A. No.

12 Q. And we'll try this again and show you  
13 Government's Exhibit 10 which has been admitted.  
14 The print is very small. It's hard to read, but  
15 it's a map of the area. And I think I can zoom  
16 in, but I don't know if that will help the print  
17 here or not. Maybe not.

18 Can you find on this map the area at  
19 Henderson and Good Hope where the crash occurred?

20 A. (Witness complies.)

21 Q. Is that about right?

22 A. Yes.

23 Q. Is that Henderson and Good Hope?

24 A. I believe it is, yes.

25 Q. So it was right at that corner there?

1 A. Where the accident took place?

2 Q. Yes.

3 A. Yes, ma'am.

4 Q. And from that point can you point for  
5 the jurors where you took Mr. Swan into custody?

6 A. Okay. It would have been the corner  
7 house right here.

8 Q. If you can circle it on the screen, it  
9 will show up. So it wasn't very far from this  
10 site of the crash?

11 A. No.

12 Q. It all happened very fast?

13 A. Correct.

14 Q. Other than that did you have any other  
15 involvement in this case?

16 A. No.

17 Q. Thank you.

18 MS. WOODRUFF: No further questions.

19 CROSS-EXAMINATION

20 BY MS. BOOTH:

21 Q. Sergeant Edwards, you saw Mr. Swan get  
22 out of the black Dodge Charger after the crash;  
23 correct?

24 A. No.

25 Q. You did not see him get out?

1 A. No.

2 Q. Well, it makes sense then that it's fair  
3 to say you never saw him reach towards the door  
4 pocket of the black Dodge Charger, or anything  
5 like that, of course, because you didn't see him  
6 get out of the car; correct?

7 A. That would be correct.

8 Q. And you searched Mr. Swan very  
9 thoroughly before you took him into custody;  
10 correct?

11 A. I believe so, yes.

12 Q. You searched his pockets?

13 A. Yes.

14 Q. Anything else that you searched? You  
15 didn't have -- it was just pockets basically to  
16 search on his person; correct?

17 A. Correct.

18 Q. Meaning he didn't have a backpack or  
19 anything like that with him?

20 A. No.

21 Q. Okay. And you didn't find anything on  
22 his person connected to a firearm, correct?

23 A. That's correct.

24 Q. You didn't find any ammunition?

25 A. No.

1 Q. You didn't find an extra magazine for a  
2 firearm, or anything like that?

3 A. No.

4 Q. And Mr. Swan, when you encountered him,  
5 he complied with your commands; correct?

6 A. That's correct.

7 Q. Okay. He never resisted you physically  
8 in any way? He didn't fight with you to go into  
9 custody?

10 A. Correct.

11 Q. I understand he ran away from the police  
12 officers, but when you were going to physically  
13 put handcuffs on him and take him into custody,  
14 he didn't physically aggress against you in any  
15 way?

16 A. That's correct.

17 Q. Okay. And Mr. Swan is a pretty large  
18 man; correct?

19 A. Yeah. As far as height I believe so,  
20 yes.

21 Q. Yes. Yes. He's a big man, but he  
22 didn't use his physical force to push against  
23 you, or anything like that?

24 A. No.

25 Q. All right. And he wasn't rude or



1 combative or disrespectful in how he spoke with  
2 you when you were taking him into custody;  
3 correct?

4 A. No not with me, no.

5 Q. Sergeant Edwards, when you got back to  
6 the police station after this incident, it was  
7 still, of course, the early morning hours of  
8 May 26th, 2018; correct?

9 A. Yes.

10 Q. And your first order of business, was it  
11 to make your police narrative?

12 A. I'm sorry, to make my what?

13 Q. Your police narrative. You authored  
14 your police narrative; correct?

15 A. At that point in time I would, yes.

16 Q. Yes, on May the 26th. If you had your  
17 report in front of you, you could look at the  
18 bottom of that if that would refresh your memory.

19 A. It looks like I opened the document  
20 at 4:29.

21 Q. I'm sorry, sir, I did not hear you. If  
22 you could say that again, please.

23 A. I believe I opened the document up at  
24 4:29 a.m.

25 Q. On May the 26th of 2018 to begin writing

1 your report; correct?

2 A. Correct.

3 Q. And you completed your report on that  
4 day; correct?

5 A. Correct.

6 Q. And then on your report it also has your  
7 signature. Did you sign the report, hand sign  
8 it?

9 A. I would have, yes.

10 Q. And is that after you review it for  
11 accuracy to make sure everything in it is correct  
12 as to how you remember it?

13 A. I try my best to review everything, but,  
14 yes.

15 Q. And certainly you reviewed your report  
16 for accuracy before you turned it over to the  
17 prosecutor and everyone to use; correct?

18 A. I typically sign it after I'm finished  
19 and I've reviewed it, yes.

20 Q. Yes, sir. Thank you. Thank you, sir.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MS. WOODRUFF:

24 Q. Officer, when you write your report, you  
25 do your best to put all the important information

1 in your report, don't you?

2 A. Yes, I do.

3 Q. Sometimes you forget to put things in  
4 there, don't you?

5 A. It can happen, yes.

6 Q. Or sometimes things that are important  
7 later you don't realize it at the time?

8 A. Correct.

9 MS. WOODRUFF: No further questions.

10 THE COURT: Any recross?

11 MS. BOOTH: No, sir. Nothing  
12 further.

13 THE COURT: You may step down.

14 THE WITNESS: Okay.

15 (Witness Excused.)

16 THE COURT: Call your next witness.

17 MS. WOODRUFF: I call Gabriel Yoder.

18 If you'll come up, the clerk will  
19 swear you in.

20 GABRIEL YODER,  
21 being produced and sworn, testified as follows:

22 THE COURT: You may proceed.

23 MS. WOODRUFF: Thank you.

24 DIRECT EXAMINATION

25 BY MS. WOODRUFF:

1 Q. Please state your name.

2 A. Gabriel Yoder.

3 Q. And how are you employed?

4 A. A patrolman with the Cape Girardeau  
5 Police Department.

6 Q. How long have you been a police officer?

7 A. Four years since August.

8 Q. And were you employed as a police  
9 officer with the Cape Girardeau Police Department  
10 on May 26th of 2018?

11 A. Yes.

12 Q. And at approximately 3:40 a.m. do you  
13 recall where you were at that time?

14 A. College and Middle Street talking with  
15 some other officers.

16 Q. Just right off the road from the  
17 Mississippi River bridge?

18 A. Yes.

19 Q. And what were you doing there?

20 A. Talking to the other officers.

21 Q. Who were the other officers?

22 A. Officer Evans and Officer Brotz.

23 Q. And while you guys are congregated down  
24 in that location, is there something that happens  
25 that catches your attention?

1           A. Yes. We heard a vehicle that sounded  
2 like it was a traveling at a high rate of speed  
3 coming across the bridge westbound in Missouri  
4 from Illinois.

5           Q. And so you've got a speeding car?

6           A. Yeah.

7           Q. What happens then?

8           A. Officer Evans goes to intercept it, and  
9 Officer Brotz was there. I turned around.

10          Q. So Officer Evans went to intercept it?

11          A. Yes.

12          Q. And you weren't in any big hurry. I  
13 mean, it's a speeding car; right?

14          A. Yes.

15          Q. It doesn't usually take a bunch of you  
16 to stop a speeding car?

17          A. No.

18          Q. Okay. So at some point it turns into  
19 something more than a just a speeding car?

20          A. Yes. Officer Evans advised that the  
21 vehicle was failing to yield, at which time I  
22 began to speed up and try to get to his location.

23          Q. And when you say he advised, you could  
24 hear the radio traffic in your car?

25          A. Yes.

1 Q. And that's how you're aware of what's  
2 going on with the other police officers?

3 A. Yes.

4 Q. And so you indicated that you were  
5 trying to get -- to hurry to catch up?

6 A. Yes.

7 Q. And what happens then?

8 A. As I'm responding to his -- to try to  
9 catch up with the pursuit he advised that the  
10 vehicle crashed at Henderson and Good Hope, and  
11 he advised that the subject was on foot.

12 Q. So were you aware that he was being  
13 chased on foot?

14 A. Yes.

15 Q. And were you then on the scene pretty  
16 quickly right after that?

17 A. I would say less than a minute.

18 Q. So when you get on the scene, what do  
19 you see?

20 A. I observe Officer Evans' vehicle with  
21 its lights still on parked behind the black Dodge  
22 Charger, and the driver side door of the Charger  
23 is open.

24 Q. Okay. And I'm going to show you what's  
25 previously been admitted as Government's

1 Exhibit 1. Is that the scene as you saw it when  
2 you first arrived? I know it's very dark. I  
3 have a better picture next.

4 A. I believe so. I can't tell from that.

5 Q. Let me show you what's marked as  
6 Government's Exhibit No. 2.

7 A. Yes.

8 Q. This shows that you've got police car  
9 lights on the scene: Is that fair to say?

10 A. Yes.

11 Q. Now, when you arrived on the scene, did  
12 you see anyone else around?

13 A. I did not.

14 Q. So Officer Evans -- was his car still  
15 there?

16 A. Yes.

17 Q. And this is exactly how you saw that --  
18 the driver's side door of the Dodge Charger?

19 A. Yes. It was completely open.

20 Q. And what did you do then?

21 A. As I approached the vehicle, I observed  
22 in the pocket of the driver's side door that  
23 there was a handgun sitting there.

24 Q. So I'm just going to circle the driver's  
25 side pocket on my screen; is that correct?

1 A. Yes.

2 Q. And is that where you saw a handgun?

3 A. Yes.

4 Q. So can you tell the jury how that gun  
5 was positioned within that pocket?

6 A. It was positioned with its grip facing  
7 down with the barrel facing forward forming like  
8 a T where you could easily grab it.

9 Q. So it's in the driver's side pocket. Is  
10 that an open pocket?

11 A. Yes.

12 Q. So you could see it right away?

13 A. Yes.

14 Q. You didn't have to like lift anything or  
15 open the door wide, or anything like that?

16 A. No.

17 Q. And would you say that it was positioned  
18 so that you could just reach out and grab it if  
19 this is the handle of the gun right here, this is  
20 the barrel? Is it like this?

21 A. Yes.

22 Q. So it's to the left of the driver?

23 A. Yes.

24 Q. So if you're left handed, you can easily  
25 reach in and grab it and pull it right up?



1           A.    Yes.    That's how I store my firearm --  
2   I'm left handed -- on my days off.

3           Q.    That's how you store your firearm in the  
4   pocket of your driver's side door?

5           A.    Yes.

6           Q.    It makes it easily accessible: Is that  
7   fair to say?

8           A.    Yes.

9           Q.    So when you saw the gun, what do you do  
10   immediately?

11          A.    I make sure I grab it. I put gloves on,  
12   and I make sure, one, it's real and, two, now  
13   that I know it is real I make it safe. I remove  
14   the magazine and lock the slide back. And after  
15   I lock the slide back, a live round comes out of  
16   the chamber of the gun showing that it was  
17   readily useable.

18          Q.    So when you say you make sure it's real,  
19   you make sure it's a real gun?

20          A.    Yes.

21          Q.    And when you say that you make it safe,  
22   do you mean that you unloaded it?

23          A.    Yes.

24          Q.    And what kind of gun was it?

25          A.    Smith & Wesson nine-millimeter.

1 Q. A handgun?

2 A. Yes.

3 Q. And a semi-automatic handgun?

4 A. Yes.

5 Q. And that means that all the ammunition  
6 fits into the handle of the gun, the grip?

7 A. It fits into the magazine.

8 Q. Right.

9 A. And the magazine is inserted into the  
10 gun.

11 Q. And then it just automatically --

12 A. You get one bang per trigger pull.

13 Q. Okay. And when you say that there was  
14 one in the chamber, what does that mean?

15 A. It means that all you have to do is pull  
16 the trigger. You don't have to rack the slide  
17 and put a round in there. You can just pick it  
18 up and shoot it.

19 Q. So you have a Smith & Wesson  
20 nine-millimeter semi-automatic handgun --

21 A. Yes.

22 Q. -- in the open door pocket of the car;  
23 correct?

24 A. Correct.

25 Q. And semi-automatic, you refer to it, but

1 for those who aren't familiar with guns, in order  
2 to make it ready to fire you have to pull back  
3 the top slide?

4 A. Yes.

5 Q. And that chambers a round?

6 A. Yes.

7 Q. So all you have to do is pull the  
8 trigger and the bullet comes out the pointing  
9 end; right?

10 A. That's correct.

11 Q. Once you seized the firearm and you  
12 unloaded it, what did you do then?

13 A. While I was doing that, I looked in the  
14 vehicle, and in plain view there was a cell phone  
15 sitting in the center console that's underneath  
16 the -- like the radio, and there was apparent  
17 marijuana on it. And as I continued to search  
18 the vehicle, I observed a marijuana cigarette in  
19 the same area.

20 And as I searched in the glove box or in  
21 the center console compartment that sits right  
22 next to the driver's seat, I found two bank cards  
23 with the name Barrett Swan on them.

24 Q. And do you collect all of those items?

25 A. Yes.

1 Q. You weren't an evidence tech at the  
2 time?

3 A. No.

4 Q. And did you -- were you aware that an  
5 evidence tech was responding?

6 A. I believe later.

7 Q. And so you just collect the items and  
8 then the evidence technician actually --

9 A. Processes everything and puts it in  
10 evidence.

11 Q. And takes photographs and everything?

12 A. Yes.

13 Q. That gun the way that you described that  
14 it was in that car door pocket, why didn't you  
15 leave it in place so it could be photographed in  
16 place?

17 A. I mean, it's a firearm. I just want to  
18 make sure that it's properly secured and that no  
19 one comes up and grabs it and tries to shoot us  
20 or comes up and tries to steal it and for  
21 evidence.

22 Q. So for safety reasons?

23 A. Yes.

24 Q. And do you then turn the scene over to  
25 the evidence technician when he arrives?

1 A. Yes.

2 Q. I'm going to show you what's previously  
3 been admitted as Government's Exhibit 4. Are  
4 these some of the items that you talked about  
5 that you found?

6 A. Yes.

7 (Government's Exhibit No. 4, Photo,  
8 was identified.)

9 BY MS. WOODRUFF:

10 Q. And so as I point to them, can you tell  
11 the jury what we're looking at here?

12 A. That's the firearm, the magazine that's  
13 in the firearm and the round that ejected from  
14 the chamber.

15 Q. So that's a live round of ammunition  
16 here?

17 A. Yes.

18 Q. How many rounds of ammunition were in  
19 the magazine?

20 A. I don't know. I did not remove the  
21 rounds from the magazine.

22 Q. Is that something the evidence tech  
23 should take care of?

24 A. Yes.

25 Q. And then what do we have here?

1           A. I believe that's the marijuana  
2 cigarette.

3           Q. Just a small amount of marijuana?

4           A. Yeah.

5           Q. And cell phone?

6           A. Yes.

7           Q. And I think you can see this, the strip  
8 of the back of the bank card; is that right?

9           A. Uh-huh.

10          Q. Is that a yes?

11          A. Yes. Sorry.

12          Q. Now, I'm going to show you what's  
13 previously been admitted as Government's Exhibit  
14 No. 5. Can you point on your screen -- actually,  
15 I think I put it on my screen. Is this the slide  
16 that you talked about you have to pull back in  
17 order to chamber a round?

18          A. Yes.

19                   (Government's Exhibit No. 5, Photo,  
20 was identified.)

21 BY MS. WOODRUFF:

22          Q. And it's just at the top of the gun?

23          A. Uh-huh, yes.

24          Q. And then other than locating this gun  
25 and making it safe, unloading it and searching

1 the car, did you have any other involvement in  
2 this case?

3 A. No.

4 Q. You didn't have any contact with  
5 Mr. Barrett Swan?

6 A. I did not.

7 Q. Thank you.

8 MS. WOODRUFF: No further questions.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MS. BOOTH:

12 Q. Officer, good afternoon.

13 A. Good afternoon.

14 Q. Sir, if you look for me at Defendant's  
15 Exhibit A, this is a Google map of the streets of  
16 the area where the black Dodge Charger was  
17 initially seen and the police chase ensued. So  
18 if you've had a moment to look at this now and  
19 see the streets indicated, so you oriented  
20 yourself that this is the map that is described?

21 A. Yes.

22 Q. Okay. So, again, you were located on  
23 College Street, correct, when you noticed a car  
24 speeding across the Mississippi river bridge  
25 proceeding into Cape Girardeau; correct?

1 A. Yes.

2 Q. And the car, would you say you noticed  
3 it as it was over the water, or was it more into  
4 Cape as you saw -- as you noticed it?

5 A. I couldn't tell you. Just it was on the  
6 bridge.

7 Q. Okay. But it was definitely on the  
8 bridge coming in from Illinois; correct?

9 A. Yes.

10 Q. Going very fast?

11 A. I believe so.

12 Q. No mistake about that; right?

13 Sir, when you noticed that black Dodge  
14 Charger speeding west coming off the bridge, you  
15 also noticed another vehicle that was also  
16 speeding and heading west in the same direction  
17 as the Charger; correct?

18 A. Yes.

19 Q. So there were two vehicles speeding  
20 heading into Cape Girardeau; is that fair to say?

21 A. Yes.

22 Q. Did they look as though they were  
23 keeping up neck and neck, the two vehicles?

24 A. I really don't remember seeing the  
25 second vehicle. I don't know where they were at.



1 I couldn't tell you anything about the second  
2 one.

3 Q. Can you remember if they were next to  
4 each other or one behind the other, if you can  
5 remember that?

6 A. I don't.

7 Q. You don't? That's all right.

8 Officer Yoder, when you began touching  
9 items of evidence inside the Dodge Charger, did  
10 you have gloves on?

11 A. Yes.

12 Q. So you had gloves on before you picked  
13 up the firearm; correct?

14 A. Yes.

15 Q. You made certain to do that?

16 A. Yes.

17 Q. And why do you put gloves on? Why not  
18 just pick the firearm up with your bare hands?

19 A. I don't want to put my fingerprints or  
20 my DNA on the gun.

21 Q. So you don't want to contaminate any  
22 evidence that may be on the gun; correct?

23 A. Correct.

24 Q. And that's a procedure you use all the  
25 time; correct?

1 A. For firearms?

2 Q. Yes, sir.

3 A. It depends on the circumstances.

4 Q. So if you have gloves available,  
5 certainly you're going to put them on for  
6 handling the firearm; correct?

7 A. Yes.

8 Q. Officer Yoder, let's look at Defendant's  
9 Exhibit D, and you found the firearm in the  
10 storage pocket of the Charger; correct?

11 A. Yes.

12 (Defendant's Exhibit No. D, Photo,  
13 was identified.)

14 BY MS. BOOTH:

15 Q. And I think that the way you described  
16 it sitting was if you were sitting in a car, you  
17 could just reach down and grab it, and it would  
18 fit conveniently in your hand. That was the  
19 position of it; correct?

20 A. Yes.

21 Q. And, in fact, you said that when you're  
22 off duty, that's how you carry your firearm in  
23 your car; is that correct?

24 A. Yes.

25 Q. And in May of 2018, Officer Yoder, for

1     our jurors who may not know, was it Missouri's  
2     law that if a person could legally carry a  
3     firearm, meaning they're not a convicted felon,  
4     they don't have a restraining order against them,  
5     they don't have any domestic assault  
6     misdemeanors, nothing that would preclude them  
7     from having a firearm in the car, a Missouri  
8     citizen didn't need a concealed carry permit or  
9     anything to carry a firearm in a car; correct?

10         A.    Correct.

11         Q.    Okay.  So, in fact, as a police officer  
12     I'm sure you've pulled over people in Missouri  
13     for just simple traffic offenses and have learned  
14     that they have a firearm in their car with them;  
15     correct?

16         A.    Yes.

17         Q.    And so long as they're not a convicted  
18     felon or prohibited from having that firearm in  
19     any way they're allowed to drive off with their  
20     firearm; correct?

21         A.    Yes.

22         Q.    Let's go back to Government's Exhibit 4.  
23     Officer Yoder, now you're not the person who took  
24     this photograph, Officer Hellmann took this  
25     photograph; correct?

1 A. Yes.

2 Q. All right. Now, who was responsible for  
3 putting the firearm and these other items in this  
4 car seat?

5 A. I was.

6 Q. Okay. So we need to be clear that when  
7 you came up to the Charger to start  
8 investigating, these items were not in this car  
9 seat; correct?

10 A. They were not.

11 Q. Okay. None of these items you found in  
12 this car seat. Again, we talked about the  
13 firearm had its magazine in it, and they were in  
14 the door pocket; correct?

15 A. Yes.

16 Q. Okay. And then the cell phone was  
17 sitting on top of the center console?

18 A. In the center -- where that white dot is  
19 on the left corner that -- underneath like the  
20 radio. Right there, yes.

21 Q. Oh, right there? Okay.

22 A. That's where it was at. Where one of  
23 the cell phones was at.

24 Q. And then I think we have some like  
25 credit cards or bank cards; correct?

1 A. Yes.

2 Q. These were not located -- these were  
3 located somewhere over in the console?

4 A. Those were located in like the actual  
5 compartment that you flip up --

6 Q. Okay.

7 A. -- in between the two seats.

8 Q. So, yes, sir. The over arching theme  
9 I'm trying to make is that these items were not  
10 found in the car seat, specifically the firearm?

11 A. Yes.

12 Q. Okay. And in the door pocket you didn't  
13 find anything but the firearm; correct?

14 A. Correct.

15 Q. You didn't find Mr. Swan's cell phone;  
16 correct?

17 A. Correct.

18 Q. You didn't find a pack of cigarettes, or  
19 anything else like that, any personal items of  
20 Mr. Swan's in the door pocket; correct?

21 A. I do not believe so.

22 Q. Officer Yoder, please look at the  
23 Defendant's Exhibit C for me. Do you recognize  
24 what this is a picture of?

25 A. It's looks like a bottle of liquor and

1 cigarettes.

2 (Defendant's Exhibit No. C, Photo,  
3 was identified.)

4 BY MS. BOOTH:

5 Q. Yes. This is a photograph of the  
6 passenger seat of the Dodge Charger after the  
7 police were processing it for evidence. Do you  
8 recall seeing that bottle of alcohol and that  
9 pack of cigarettes in that passenger seat?

10 A. I don't.

11 Q. That's okay if you don't. But you don't  
12 remember seeing that?

13 A. No.

14 Q. And, again, you didn't take this photo?

15 A. No.

16 Q. Now, we talked about how you put some  
17 evidence items in the driver's seat just for a  
18 photographic purpose; correct?

19 A. Yes. All the things that I located.

20 Q. Okay. Yes, sir. The important things  
21 that you located.

22 But now you didn't place this alcohol  
23 bottle or this pack of cigarettes in the  
24 passenger seat; correct?

25 A. No.

1 Q. So it's fair to say that that's how it  
2 was found when the police encountered the car?

3 A. I don't know if it was by another  
4 officer.

5 Q. That's a good point, but you know you  
6 didn't?

7 A. I don't believe so.

8 Q. Thank you, Officer.

9 THE COURT: Redirect?

10 MS. WOODRUFF: No, sir.

11 THE COURT: You may step down.

12 (Witness Excused.)

13 THE COURT: Call your next witness.

14 MS. WOODRUFF: Yes, sir. The  
15 Government calls Corporal Brett Hellmann.

16 BRETT HELLMANN,  
17 being produced and sworn, testified as follows:

18 THE COURT: You may proceed.

19 MS. WOODRUFF: Thank you.

20 DIRECT EXAMINATION

21 BY MS. WOODRUFF:

22 Q. Would you please state your name.

23 A. Brett Hellmann.

24 Q. Where are you employed?

25 A. I'm a police officer for Cape City.

1 Q. How long have you been a police officer?

2 A. A little over five years.

3 Q. And were you employed working in your  
4 capacity as a police with the Cape Girardeau  
5 Police Department on May 26th of 2018?

6 A. I was.

7 Q. What was -- did you have any special  
8 duties at that time?

9 A. I did. I was a evidence technician.

10 Q. Can you explain to the jury what an  
11 evidence technician is.

12 A. Any time there's any kind of evidence on  
13 a crime scene that needs to be processed they  
14 call me out to the scene, and that's what I do.

15 Q. So do you have specialized training for  
16 that?

17 A. I do.

18 Q. Do you have to go to certain schools?

19 A. I've been to three or four different  
20 schools, probably altogether a couple of months'  
21 worth.

22 Q. And that's in order to qualify you to be  
23 an evidence technician?

24 A. Yeah. Certified evidence tech.

25 Q. And that's the capacity that you served



1 then on May 26th, 2018?

2 A. It was.

3 Q. On that date were you called to the  
4 scene of a motor vehicle crash at Henderson and  
5 Good Hope?

6 A. I did.

7 Q. And can you just describe for the jury  
8 what you saw when you got there?

9 A. When I got there, there was a black  
10 Dodge Charger facing south on Henderson right  
11 past Good Hope, I believe. It appeared that it  
12 had struck a parked car on the side of the road.  
13 There was a police car parked behind it. And on  
14 the Dodge Charger the driver door was wide open.

15 Q. And let me show you what's previously  
16 been admitted as Government's Exhibit 2. Is that  
17 the scene you saw as you arrived on the scene?

18 A. Yes, it is.

19 Q. Did you take this photo?

20 A. I did.

21 Q. Did you take all of the photos involved  
22 in this matter?

23 A. I believe so. I'm pretty sure I took  
24 every photograph in this case.

25 Q. Because you're an evidence technician?

1           A. That is correct. That is what I do.

2           Q. And it is your job to take photos and  
3 collect the evidence?

4           A. That is correct.

5           Q. And is that what you did here?

6           A. Uh-huh.

7           Q. Is that a yes?

8           A. Yes.

9           Q. And so is -- the door being open like  
10 that, is that how you saw the scene when you  
11 arrived?

12          A. That is exactly how I saw the scene when  
13 I arrived. Nothing has been moved there.

14          Q. All right. And next I'm going to show  
15 you what's marked and previously been admitted as  
16 Government's Exhibit Number 3. Can you explain  
17 to the jury what they are seeing --

18          A. Move that down just a little bit.

19          Q. -- here?

20          A. Yes. That is the front end of the Dodge  
21 Charger facing south. And there -- it's hard to  
22 see, but there's actually some damage right  
23 around here.

24                       (Government's Exhibit No. 3, Photo,  
25 was identified.)

1 BY MS. WOODRUFF:

2 Q. If you can circle it on the screen, it  
3 will show up for the jurors.

4 A. I can do that. Okay. Right in there.

5 Q. And that's where you noted the damage?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. That's a dark-colored car, so it's  
10 difficult to see, but in person you could see it  
11 just fine?

12 A. You can see it easily.

13 Q. Was there any damage to that tan car?

14 A. There's some damage to the back end and  
15 in that area.

16 Q. All right. And next I'm going to show  
17 you what's been marked and admitted as  
18 Government's Exhibit 4. Can you explain to the  
19 jury what they are seeing here?

20 A. This is the driver's seat of the black  
21 Dodge Charger that had the door open in the  
22 picture. What you're looking at is a handgun,  
23 which is right there. It's got a little dot on  
24 it. You have the magazine, which goes to the  
25 bottom of the handgun and holds all the bullets,

1 that is right there. It's hard to see on here.

2 I believe this right here is the -- yes.  
3 That right there is a spent -- not a spent bullet  
4 but just a loose bullet. There's a marijuana  
5 cigarette. A couple of cell phones are in there.  
6 There's a wallet somewhere in here, I believe,  
7 and a couple of credit cards here and there. And  
8 there's the cell phone I was talking about  
9 earlier.

10 Q. And those were all evidentiary items  
11 that you seized?

12 A. Yes. Those were all items that I seized  
13 except for the wallet that's over here and the --  
14 there's the top of the center console that's  
15 there as well. I did not seize those two items.

16 Q. When you got on scene, were those items  
17 already in the seat?

18 A. Yes, they were already in the seat.

19 Q. So you didn't search the car and find  
20 those items yourself, somebody had already  
21 selected them?

22 A. That's correct.

23 Q. And was that Patrolman Yoder?

24 A. That was Yoder.

25 Q. Next, I'm going to show you what's been

1 admitted as Government's Exhibit 5, and this is  
2 just a closer photo, but can you tell the jurors  
3 what each of these items are? And feel free to  
4 use the screen.

5 A. Okay. So, once again, like I said, this  
6 is the handgun that had been located in the car.  
7 And then there is a magazine containing the  
8 bullets which is right there. This right here is  
9 the better picture of the loose round, which I  
10 believe came from the chamber of the gun itself.  
11 A marijuana cigarette. And then you've got a  
12 couple of business cards. And then there's the  
13 back of one of the debit cards.

14 Q. And you collected all of those items?

15 A. Yes.

16 Q. And was there a name on those bank  
17 cards?

18 A. Yes. The bank cards have Barrett Swan's  
19 name on them.

20 Q. And I know that typically as an evidence  
21 technician you prefer to photograph items in  
22 place; is that fair to say?

23 A. That's correct. I prefer to do that.

24 Q. And that didn't happen here?

25 A. It did not.

1 Q. Can you explain to the jury, if you  
2 know, why that did not happen here?

3 A. Ultimately, we would like to preserve  
4 evidence in the way that we see it. That way in  
5 situations like this you can see exactly what we  
6 saw, but officer safety and the safety of the  
7 public comes first. If there's a gun in play  
8 when we show up and it's sitting there, and we  
9 can't -- we don't have the officer available to  
10 make sure that that gun is not dangerous, we have  
11 to seize that gun. We have to make sure it's  
12 safe. We don't want to get shot in the back. We  
13 don't want anybody else to get shot. So that's  
14 why we have to move it sometimes.

15 Q. And sometimes the situations you're in  
16 are pretty fluid; is that fair to say?

17 A. That's very fair to say.

18 Q. So there are times when it is best to  
19 seize the gun and immediately unload it rather  
20 than leave it in play, I think is the words you  
21 used; right?

22 A. Yes, that's correct.

23 Q. Now, this particular gun, it was a Smith  
24 & Wesson?

25 A. Yes.

1 Q. A nine-millimeter?

2 A. Yes.

3 Q. Semi-automatic handgun?

4 A. Semi-automatic handgun.

5 Q. And for the jurors who are not familiar  
6 with the difference between semi-automatic  
7 handguns and revolvers, can you just give them a  
8 little bit of an explanation of what the  
9 difference is?

10 A. Yes. So like I was saying earlier, this  
11 is the magazine on the gun. That magazine goes  
12 into the bottom of the gun, and the main  
13 difference between a semi-automatic and a  
14 revolver is every time you pull the trigger on a  
15 semi-automatic gun the gun will fire, but a shell  
16 casing gets ejected from the gun.

17 A revolver doesn't. You pull the  
18 trigger on the revolver -- you can still pull the  
19 trigger until, you know, there's no more bullets,  
20 but the shells stay in the gun.

21 Q. So the revolver is going to be a little  
22 harder?

23 A. A little tougher.

24 Q. And in a semi-automatic the magazine  
25 fits into the grip of the gun?

1           A.   That's correct.

2           Q.   Now, so you seized all of these items,  
3 you took them back to the Cape Girardeau Police  
4 Department?

5           A.   Yes, I did.

6           Q.   Now, in addition to these photos you  
7 took some other photos I believe?

8           A.   Yes, I took several other photos.

9           Q.   So can you explain to the jury what  
10 they're seeing here?

11          A.   That's the front passenger seat.  
12 There's a bottle of liquor here. It looks like a  
13 pack of cigarettes there.

14          Q.   Now, those items are photographed in  
15 place as you found them; is that correct?

16          A.   That's correct.

17          Q.   That's how you saw them? You  
18 photographed them just as they were?

19          A.   Yes.

20          Q.   To your knowledge, they hadn't been  
21 moved by anyone else?

22          A.   No. Not to my knowledge, no.

23          Q.   Do you know if there's any liquor in  
24 that bottle?

25          A.   I don't recall.



1 Q. But you didn't take the bottle with you?

2 A. No, I did not. I did not seize the  
3 bottle.

4 Q. And then did you also take photographs  
5 of the backseat of the car?

6 A. Yes.

7 Q. And once you seized all the items, did  
8 you return them to the Cape Girardeau Police  
9 Department?

10 A. I did.

11 Q. And then did you take what we call  
12 controlled photos?

13 A. Yes. I take photographs on the scene,  
14 and any evidence that I collect from the scene I  
15 take back to the station, or I take better  
16 photographs closer up to it that's why you can  
17 actually tell -- you know, if it wasn't clear  
18 before, you can see what it is there.

19 Q. And, of course, the police department,  
20 that's a safe environment, you can take your time  
21 and take as many photographs as you want?

22 A. Yes.

23 Q. So I'm going to show you what's  
24 previously been admitted as Government's  
25 Exhibit 7. Can you just please explain to the

1 jury what you're seeing here.

2 A. Yes. This right here is the same  
3 firearm that you saw in the front seat of the  
4 black Charger. This is the magazine that I also  
5 pointed out. All of these bullets here all came  
6 from the magazine itself. And this round -- this  
7 bullet there was the bullet that came from the  
8 chamber of the firearm.

9 (Government's Exhibit No. 7, Photo,  
10 was identified.)

11 BY MS. WOODRUFF:

12 Q. So how many rounds were in the magazine?

13 A. There were 15 in the magazine.

14 Q. And how many rounds does the magazine  
15 hold?

16 A. A magazine holds 15 rounds.

17 Q. So we have 16 bullets here?

18 A. That's correct.

19 Q. Where was the 16th bullet?

20 A. The 16th bullet was what most people  
21 would describe as in the barrel. It would be the  
22 first one when you pull the trigger it would  
23 fire.

24 Q. So how do you get that 16th bullet into  
25 the gun while still keeping a full magazine?

1           A. The easiest to way to do it is just to  
2 take a magazine that has 15 bullets in it, put it  
3 in the bottom section right there. You then pull  
4 the slide back, which takes one of those bullets  
5 from the magazine and puts it in the chamber or  
6 in the barrel, and then you can take the magazine  
7 out and put another bullet in.

8           Q. So then you're not just fully loaded,  
9 but you are fully loaded?

10          A. Yes. 15 plus one.

11          Q. Okay. And next I'm going to show you  
12 what's marked as Exhibit 8. Can you please  
13 describe for the jury what we're seeing here?

14          A. Once again, these are the two cell  
15 phones that I pointed out earlier. This is the  
16 marijuana cigarette. This right here is just a  
17 couple of pieces of loose marijuana, a small  
18 amount. These are the two debit cards that had  
19 Barrett Swan's name on it. And these are the  
20 business cards. I think it was Lavish Boutique.

21                   (Government's Exhibit No. 8, Photo,  
22 was identified.)

23 BY MS. WOODRUFF:

24          Q. And you collected those because Officer  
25 Yoder put them in the driver's seat?

1           A.   That's correct.

2           Q.   You didn't have a -- do you remember if  
3 they had anybody's name on them, or anything like  
4 that?

5           A.   The two Alliance Bank cards had Barrett  
6 Swan's name on them.

7           Q.   Did the business cards have anybody's  
8 name on them?

9           A.   I don't think so.

10          Q.   Now, that small amount of marijuana -- I  
11 call it a small amount. Is that, in fact, an  
12 actual very small amount of marijuana?

13          A.   Yeah. It's a small amount. It was less  
14 than 10 grams. It was very small.

15          Q.   And less than 10 grams that means --

16          A.   It's just a fine.

17          Q.   Just a fine?

18          A.   Just a fine in the State of Missouri.

19          Q.   So that firearm that you seized --

20                MS. WOODRUFF: Your Honor, may I  
21 approach the witness?

22                THE COURT: Yes.

23          BY MS. WOODRUFF:

24                Q.   Now, I've handed you what is marked as  
25 Government's Exhibit No. 9. Are there any

1 identifying marks on the outside of that box?

2 A. Yes. You have the information that I  
3 put on the box, report number, my name, DSN,  
4 date.

5 Q. And can you go ahead and open the box  
6 and take a look inside?

7 A. Uh-huh.

8 (Government's Exhibit No. 9, Box,  
9 was identified.)

10 BY MS. WOODRUFF:

11 Q. And I know that some of the items may be  
12 loose. I believe that -- well, actually why  
13 don't you tell the jury what's inside the box.

14 A. The bullets. The count I believe is  
15 probably 15. 15.

16 Q. Those are the 15 bullets in the  
17 magazine?

18 A. Those are the 15 from the magazine. Can  
19 I hold this up?

20 Q. As soon as you're done with the bullets.

21 A. Okay.

22 Q. And those bullets, are those all  
23 nine-millimeter?

24 A. These are all nine-millimeter.

25 Q. But they're not all the same brand, are

1       they?

2               A.   No.   There's several different brands in  
3       here.   Different colors.   Different types of  
4       bullets.

5               Q.   But it's still nine-millimeter?

6               A.   Yeah.   They're all nine-millimeters.

7               Q.   And then if you can set that down.   And  
8       then, if you can, hold up for the jury and point  
9       to or show them that's what inside this box so  
10      they understand.   And what is that?

11              A.   That's the firearm that was seen earlier  
12      in the photographs with the magazine.   And then  
13      the round from the bullet or from the barrel is  
14      in that box.

15              Q.   So that's a firearm that you seized as  
16      evidence from the black Charger?

17              A.   Yes, it is.

18              Q.   Obviously, that's a real gun?

19              A.   Yes.

20              Q.   Fires a real bullet?

21              A.   Yes.

22              Q.   You can go ahead and have a seat.   As an  
23      evidence technician you have some specialized  
24      training, of course, in processing evidence;  
25      right?

1           A. That's correct.

2           Q. You already talked about taking photos  
3 and how it's preferable if it's safe to do so to  
4 photograph things in place; right?

5           A. Yes, it is.

6           Q. And this particular instance with the  
7 fluid situation with the firearm it was not  
8 photographed in place?

9           A. It was not, no.

10          Q. But that's not unusual, is it?

11          A. No, it's not unusual. I mean, like I  
12 said, we'd like to have it in its original place,  
13 but it happens quite frequently that can't do  
14 that because, like I said, safety is the number  
15 one thing.

16          Q. The next thing I want to talk about is,  
17 based on your training and experience as an  
18 evidence technician and when you send things to  
19 the lab for testing, to the crime lab, now, in  
20 this particular instance was that gun sent to the  
21 crime lab?

22          A. No. This gun was not sent to the crime  
23 lab.

24          Q. Now, sometimes you can send guns to the  
25 crime lab, can't you?

1           A.    You can.

2           Q.    And sometimes you can have them test it  
3 for all those things we see on TV like DNA and  
4 fingerprints and all that kind of stuff; right?

5           A.    Yes, you can. You can do that.

6           Q.    But that doesn't happen in every case,  
7 does it?

8           A.    No, it does not.

9           Q.    And you did not do that in this case,  
10 did you?

11          A.    I did not.

12          Q.    And as far as fingerprints, why didn't  
13 you send the gun for fingerprints testing?

14          A.    There are several reasons why I didn't  
15 do fingerprints. Number one, if I have a gun  
16 that -- or anything that comes from a vehicle or  
17 a house where I believe I already know who it  
18 belongs to -- fingerprints and DNA are expensive.  
19 This should be something -- that's something that  
20 you reserve for homicide investigations, major  
21 assaults, possibly some robberies if you don't  
22 have a suspect identified. It's to identify an  
23 actual suspect for a particular crime.

24                Also, for fingerprinting, do you just  
25 want me to handle the fingerprints?



1 Q. I'm sorry?

2 A. Do you just want me to handle just the  
3 fingerprint aspect, why I didn't send this for  
4 fingerprints?

5 Q. If you could.

6 A. Okay.

7 Q. You could break it down to DNA in just a  
8 second.

9 A. Fingerprints is all based off of  
10 texture. Can I stand up and show them?

11 MS. WOODRUFF: May he stand?

12 THE COURT: Okay.

13 A. Okay. It's all based off of texture.  
14 You want something that's very smooth that will  
15 absorb the oil that's on your fingers. That's  
16 what gives away the fingerprint. If it has -- if  
17 it's a textured surface, you're not going to be  
18 able to see that actual latent print. They call  
19 it a latent print, but we'll just call it  
20 fingerprints for now.

21 This has all of the -- pretty much  
22 everything negative to try to get a fingerprint  
23 off of it. All of these grips. All of this  
24 stuff on the slide where even if there was a  
25 fingerprint on the slide, you wouldn't be able to

1 see it anyway.

2 Q. Because it's too textured?

3 A. It's too textured, yeah.

4 Q. And so the surface matters when you're  
5 talking about fingerprints?

6 A. Surface is the number one thing when it  
7 comes to fingerprints.

8 Q. So it's not like on TV where everything  
9 you touch has a useable fingerprint; right?

10 A. That's correct.

11 Q. And, in fact, have you ever tested a gun  
12 for fingerprints and successfully got a print  
13 back?

14 A. Not that I can ever remember getting a  
15 fingerprint back on a gun. They pretty much  
16 always come off glass.

17 Q. I know that fingerprints are a bit  
18 different than DNA?

19 A. Yes.

20 Q. And we see a lot of stuff in true crime  
21 shows about DNA.

22 A. Uh-huh.

23 Q. But you didn't send this gun for DNA  
24 either, did you?

25 A. I did not, no.

1           Q. Please explain to the jury why you did  
2 not do that.

3           A. Several reasons. Once again, like I  
4 mentioned earlier, DNA is extremely expensive.  
5 It takes a lot of time. It could take upwards of  
6 a year on two years to get a DNA sample back if  
7 you were to send something in. It's not like  
8 people think where you can send a DNA sample off  
9 and get it to come back in two days. It just  
10 doesn't work that way.

11                 Also, from my understanding this gun --  
12 I mean, this came from a vehicle owned and  
13 registered by Barrett Swan. If this gun was  
14 located in his car, his DNA is going to be on it.  
15 It would be like having an item in your house,  
16 your DNA is going to be on the -- you may never  
17 have touched that item, but your DNA is probably  
18 going to be on it. It doesn't have to be of  
19 evidentiary value on it.

20           Q. So if you find an item in my pocket, you  
21 would expect to find my DNA on it; right?

22           A. Yes.

23           Q. If you find an item in my car that I am  
24 in all the time, I routinely use, you would  
25 expect to find my DNA on it?

1           A.    Yes.

2           Q.    So is there evidentiary value in sending  
3 those items to just confirm what we already  
4 expect to be there?

5           A.    I don't believe so.

6           Q.    And, in fact, if you send that gun and  
7 it has, say, Mr. Swan's DNA on it, does that give  
8 you a time frame for it?

9           A.    No, there's no time frame for DNA.

10          Q.    And so even if DNA had been found on it,  
11 you wouldn't know if he intentionally put it  
12 there or if it's just his skin cells falling off  
13 in the car?

14          A.    That's correct.

15          Q.    Is it fair to say you have to make  
16 judgment calls on the evidentiary value of why  
17 you send things to the crime lab?

18          A.    Yeah. I have to make judgment calls as  
19 to what I send and what I don't send. Obviously,  
20 if I'm ordered to send something, I will.

21          Q.    And in this particular instance you made  
22 a judgment call not to send either of those  
23 items?

24          A.    I did.

25          Q.    Because you didn't think there was going

1 to be any true evidentiary value in any of the  
2 results?

3 A. That's correct. And to touch back on  
4 the DNA, if you don't mind, there are two  
5 different types -- we'll just make it easy -- two  
6 different types of DNA. There's the body fluid  
7 DNA and then there's touch DNA.

8 Touch DNA is what people like to think  
9 of, you know, you just -- I put my hand here, and  
10 then you swab it, and you can get my DNA from me  
11 touching this table. It doesn't work that way.  
12 You would have to put -- you would have to really  
13 hold something for quite an extended period of  
14 time, and it would have to -- I don't want to say  
15 recent, but it's just that it's not the best way.  
16 You would need body fluid for DNA for the most  
17 part.

18 Q. So the best results of the DNA are from  
19 bodily fluids?

20 A. Yes.

21 Q. Blood?

22 A. Yes.

23 Q. Saliva?

24 A. Yes.

25 Q. Semen?

1 A. Yes.

2 Q. And then touch DNA, it's a little bit  
3 like junk science, isn't it?

4 A. It's just it's the science of you  
5 touching something, and then some of your skin  
6 cells get left behind, and then they're able to  
7 on occasion get DNA from that.

8 Q. But in order for skin cells to be left  
9 behind you have to have friction; right?

10 A. That's correct.

11 Q. Like a skin cell may have fell here on  
12 this piece of paper, but at the same time while  
13 I've been standing here for a couple of hours, my  
14 DNA may not be anywhere on here; right?

15 A. It may not be.

16 Q. And that's what touch DNA is?

17 A. That's what touch DNA is.

18 Q. And given the lack of evidentiary value  
19 for fingerprints or touch DNA in this particular  
20 case, lack of bodily fluids, you didn't send any  
21 of these items for testing?

22 A. I did not, no.

23 MS. WOODRUFF: Thank you. No  
24 further questions.

25 THE COURT: Ms. Booth.

CROSS-EXAMINATION

BY MS. BOOTH:

Q. Officer Hellmann, good afternoon.

A. Good afternoon.

Q. Sir, let's begin with something that's been previously marked as Defendant's Exhibit B.

A. Okay.

Q. Now, you recognize that you took this photograph; correct?

A. That's correct.

Q. All right. And I believe you've already discussed on Direct Examination why there isn't a photograph of the firearm actually inside the door pocket; correct?

A. That is correct.

Q. Okay. But it's important to note you actually took a picture of the car with the door open so that you'd be able to demonstrate where the firearm was found; correct?

A. That was -- that was not the purpose of that photograph, no. That photograph was simply an overall -- call it overall photograph of the scene, so that this was just simply kind of showing this is what I see from my perspective at this point, so just so anyone else that looks

1 months down the road could see it.

2 Q. Certainly. But also to be able to  
3 explain to a jury or a prosecutor where the  
4 firearm was found. This picture you took is  
5 helpful because it shows the door that's open and  
6 the door pocket; correct?

7 A. Yeah. It shows the door pocket right  
8 there.

9 Q. And you took lots of pictures in this  
10 case as far as the Charger, the contents --

11 A. Yes.

12 Q. -- at the scene; correct?

13 A. That's correct.

14 Q. And pictures are important so they can  
15 show parties at a later date where evidence was  
16 found; correct?

17 A. Yes.

18 Q. I believe you spoke of this bottle of  
19 alcohol on Direct with Ms. Woodruff. But, again,  
20 this is a picture of a bottle of alcohol found in  
21 the passenger seat of the Dodge Charger; correct?

22 A. That's correct.

23 Q. And you took this picture of the bottle  
24 as found, no police officer had placed this  
25 bottle in that seat, or anything like that?



1           A. I didn't witness any police officer  
2 place the bottle there. I never moved it.

3           Q. All right. Officer Hellmann, did you  
4 also take the picture that's Defendant's Exhibit  
5 F?

6           A. Yes, I did.

7                         (Defendant's Exhibit No. F, Photo,  
8 was identified.)

9 BY MS. BOOTH:

10          Q. Can you explain to the jury what this is  
11 a picture of?

12          A. It is the backseat of the Dodge Charger.

13          Q. And did you have occasion to actually  
14 look in this bag right here --

15          A. I don't --

16          Q. -- to see what the contents were?

17          A. I don't recall if I did or not. Is  
18 there a picture of it?

19          Q. No, sir, there is not.

20          A. Okay. Then I don't recall.

21          Q. Officer Hellmann, did you pick up the  
22 firearm at the scene and put it in an evidence  
23 bag?

24          A. Can you repeat the question? Like did I  
25 remove it from the vehicle and take it back to

1 the station?

2 Q. Yes, sir.

3 A. Yes, ma'am.

4 Q. When you handled the firearm, did you  
5 have gloves on?

6 A. Yes, ma'am. Always use gloves.

7 Q. Always use gloves --

8 A. Always use gloves.

9 Q. -- when you handle a firearm; correct?

10 A. Yes, ma'am.

11 Q. And why is that?

12 A. It is for evidence purposes. If you --  
13 like I said, with being around the scene we're  
14 there for 5 or 10 minutes, and I don't know what  
15 I'm going to do with this yet. If I do decide to  
16 send it in for DNA or fingerprints, I do not want  
17 my DNA or fingerprints on it.

18 Q. Exactly.

19 A. Yes.

20 Q. Do you have any forensic evidence report  
21 that Mr. Swan's fingerprints are on that firearm?

22 A. No.

23 Q. And when you do have fingerprint  
24 evidence in a case, it's very powerful evidence,  
25 wouldn't you agree?

1           A. It could be. It depends on the  
2 situation.

3           Q. And you indicate the reason why you  
4 didn't send this firearm off for fingerprint  
5 analysis is because there aren't any smooth  
6 surfaces on the firearm?

7           A. I don't want any smooth surfaces. I  
8 would say it doesn't have a lot of smooth  
9 surfaces.

10                   MS. BOOTH: Sir, may I approach  
11 Officer Hellmann?

12 BY MS. BOOTH:

13           Q. Officer Hellmann, would you hold up the  
14 evidence box for the jury so that they can see  
15 the firearm contained therein.

16           A. Uh-huh.

17           Q. Is it fair to say that on the slide of  
18 the firearm -- I'm sorry, sir, the magazine, and  
19 if you could point to what the magazine is.

20           A. This is the magazine.

21           Q. That there's some smooth surfaces on  
22 there?

23           A. There are.

24           Q. And the bullets as well, there are  
25 smooth surfaces on the bullets?

1 A. Yeah, they're smooth.

2 Q. And to load the firearm obviously  
3 someone has to use their hands to do that?

4 A. Yes.

5 Q. You have no evidence that Mr. Swan ever  
6 touched this firearm; correct?

7 A. I guess not.

8 Q. And no evidence he ever touched that  
9 magazine?

10 A. There's no fingerprints.

11 Q. Yes, sir. And no evidence that he ever  
12 touched the bullets?

13 A. No fingerprints.

14 Q. Yes, sir. No fingerprints.

15 MS. BOOTH: Nothing further for  
16 Officer Hellmann.

17 THE COURT: Any redirect?

18 MS. WOODRUFF: Just briefly, Judge.

19 REDIRECT EXAMINATION

20 BY MS. WOODRUFF:

21 Q. Corporal, Ms. Booth specifically asked  
22 about the bullets.

23 A. Uh-huh.

24 Q. And I know sometimes it's interesting to  
25 hypothesize when you're watching television shows

1 where fingerprints are found on bullets, but that  
2 is a tiny curve in it, isn't it?

3 A. It is.

4 Q. And, in fact, a print is the entire pad  
5 of your finger; right?

6 A. That would be a full print, yes.

7 Q. Now, if I intentionally rolled my print  
8 along that bullet, maybe you could recover it,  
9 but that is highly unlikely, isn't it?

10 A. Yes. We'll put it this way: I've  
11 recovered I don't know how many shell casings in  
12 my career, bullets in my career, and never once  
13 have we ever located a fingerprint on a shell  
14 casing. And I will say I know -- I know there  
15 have been some cases where we have tried if they  
16 have been homicides, and nothing has come up.

17 Q. And when Ms. Booth asked you if there --  
18 I believe her question was there's no evidence  
19 tying this gun to Mr. Swan. You mean there's no  
20 forensic evidence?

21 A. There's no forensic evidence.

22 Q. I mean, obviously, the gun right next to  
23 him in his car is evidence?

24 A. That's right.

25 Q. And that's illustrated through your

1 testimony?

2 A. Yes.

3 Q. So when you answered that's correct to  
4 her, you meant no --

5 A. No forensic evidence. That's what I  
6 meant.

7 Q. Okay. I just wanted to clarify that.

8 A. Yes.

9 THE COURT: Anything further?

10 MS. BOOTH: No, sir.

11 THE COURT: You may step down.

12 (Witness Excused.)

13 THE COURT: Ladies and gentlemen,  
14 we'll take about a 10-minute break, and you can  
15 go back to the jury room.

16 Remember the admonition I told you  
17 not to discuss the case among yourselves or with  
18 others or permit anyone to discuss it in your  
19 presence. Do not form or express any opinion  
20 about the case until it's given to you to decide.

21 So you can go back with the Court  
22 Security Officer or the clerk, and we'll call you  
23 back in 10 minutes or a little more. Thank you.  
24 Court is in recess.

25 (Proceedings stood in temporary

1 recess.)

2 (Proceedings resumed in open court  
3 outside the presence of the jury.)

4 THE COURT: Do you want to make a  
5 record about what we discussed in Chambers,  
6 counsel?

7 MS. BOOTH: Yes, sir.

8 Sir, it has come to the attention of  
9 the attorneys that one and, perhaps, more of the  
10 jurors are having difficulties staying awake. I  
11 have discussed this matter with Mr. Swan. He  
12 knows that he could ask for a mistrial at this  
13 point, and he is not going to do so.

14 It's his understanding that we're  
15 going to finish the Government's case in chief  
16 today and return tomorrow for the defense case in  
17 chief, and he is not asking for a mistrial.

18 THE COURT: Do you agree with that,  
19 Mr. Swan?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Do you have any  
22 questions about it?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay. I will state that  
25 I did notice some people nodding off, but I

1 didn't think anybody was asleep, or anything like  
2 that. It's not much different than a lot of  
3 trials. I didn't really think that it was of  
4 that significance, but, anyway, you made your  
5 record, so you can bring the jury in.

6 And I will admonish the jury to pay  
7 better attention.

8 (Proceedings resumed in open court.)

9 THE COURT: Be seated, please.  
10 Sorry for the delay. We had an equipment issue  
11 that we had to deal with. We'll go until about  
12 5:30 or 6:00 today, probably maybe not even that  
13 late.

14 One other issue I want to raise.  
15 The lawyers for both sides are very concerned  
16 that several of you appear to be nodding off a  
17 little bit. Please pay strict attention to  
18 everything that's going on during the trial.

19 With that, call your next witness.

20 MS. WOODRUFF: Thank you, Your  
21 Honor.

22 The Government calls Steven Fowler.

23 If you'll walk around, the clerk  
24 will swear you in.

25 STEVEN FOWLER,



1 being produced and sworn, testified as follows:

2 THE COURT: You may proceed.

3 MS. WOODRUFF: Thank you.

4 DIRECT EXAMINATION

5 BY MS. WOODRUFF:

6 Q. Would you please state your name.

7 A. Steven Fowler.

8 Q. And, Mr. Fowler, where do you currently  
9 live?

10 A. In Poplar Bluff.

11 Q. Have you lived there your entire life?

12 A. Yes.

13 Q. Are you a gun owner?

14 A. Yes.

15 Q. And I'm going to show you what's  
16 previously been admitted as Government's  
17 Exhibit 13. You'll see it pop up on your screen.  
18 Can you see that?

19 A. Yes.

20 Q. And this is an ATF report regarding a  
21 Smith & Wesson nine-millimeter semi-automatic  
22 handgun. Do you, in fact, own a Smith & Wesson  
23 nine-millimeter automatic handgun?

24 A. Yes, I do.

25 Q. Semi-automatic handgun, excuse me.

1 A. Yes.

2 Q. And, as indicated on this ATF trace, do  
3 you recall when you first got that firearm?

4 A. I purchased it new, yes.

5 Q. You purchased it from Instapawn in  
6 Poplar Bluff?

7 A. Yes, I did.

8 Q. And the purchaser information you see it  
9 there, is that your name?

10 A. Yes, it is.

11 Q. And the date of your purchase was  
12 March 15th of 2013?

13 A. Yes.

14 Q. And did you -- obviously, you bought  
15 that from a licensed dealer?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. And that gun belonged solely to you?

20 A. Yes.

21 Q. Now, when did you become aware that your  
22 gun was missing?

23 A. Honestly when ATF called me.

24 Q. So ATF called you after it was  
25 recovered?

1 A. Yes.

2 Q. And until that time did you think that  
3 it was still in your safe at home?

4 A. Yes.

5 Q. You didn't even know that it was gone?

6 A. Once I put them up I don't -- I don't go  
7 and play with them, you know, so I always just  
8 thought it was there.

9 Q. So once you put it up, you didn't take  
10 it out to mess with it, you just thought it was  
11 still there?

12 A. Yes.

13 Q. And you did not become aware that it had  
14 been stolen until ATF contacted you?

15 A. Correct.

16 Q. And but can you confirm for the jury  
17 that you did, in fact, purchase the firearm that  
18 we see noted here on this ATF trace?

19 A. Yes, I did.

20 MS. WOODRUFF: And, Your Honor, may  
21 I approach the witness with the exhibit?

22 THE COURT: Yes.

23 BY MS. WOODRUFF:

24 Q. Mr. Fowler, can you take a look at that  
25 gun and confirm for the jury that that, in fact,

1 is a gun that belongs to you?

2 A. It is definitely my gun.

3 Q. And that's the gun that you thought was  
4 in your safe, but it turns out that it had been  
5 stolen?

6 A. Correct.

7 Q. And do you know Barrett Swan?

8 A. No, I do not.

9 Q. Have you ever seen him before in your  
10 life?

11 A. Yes.

12 Q. And did he have permission to possess  
13 your gun?

14 A. No.

15 Q. Do you know Ebony Stigall?

16 A. No.

17 Q. And did anyone have permission to  
18 possess your gun other than yourself?

19 A. No.

20 Q. Thank you.

21 MS. WOODRUFF: No further questions.

22 CROSS-EXAMINATION

23 BY MS. BOOTH:

24 Q. Mr. Fowler, good afternoon.

25 A. Okay.

1 Q. Sir, you live in Poplar Bluff right now?

2 A. Yes.

3 Q. And that is where this firearm was  
4 purchased back in 2013?

5 A. Yes.

6 Q. And so you're very familiar with Poplar  
7 Bluff?

8 A. Oh, yes.

9 Q. Sir, on Fridays in Poplar Bluff is there  
10 an event at the sale barn?

11 A. Yes, there is every Friday.

12 Q. Okay. Can you tell our jurors what  
13 happens at the sale barn in Poplar Bluff every  
14 Friday?

15 A. People sell anything and everything.

16 Q. It's just like a giant swap meet or  
17 garage sale?

18 A. Pretty much.

19 Q. And you're familiar with that?

20 A. Yes.

21 Q. Okay. Are firearms also sold at the  
22 sale barn?

23 A. Yes. Mostly rifles.

24 Q. But it's not limited to just rifles?

25 A. No.

1 Q. Have you ever purchased a firearm at the  
2 sale barn?

3 A. No.

4 MS. BOOTH: Judge, I have nothing  
5 further for Mr. Fowler.

6 REDIRECT EXAMINATION

7 BY MS. WOODRUFF:

8 Q. Do you go to the sale barn regularly?

9 A. No.

10 MS. WOODRUFF: No further questions.

11 THE COURT: You may step down.

12 (Witness Excused.)

13 THE COURT: Call your next witness.

14 MR. SORRELL: I call Kristy

15 Pennington.

16 KRISTY PENNINGTON,

17 being produced and sworn, testified as follows:

18 THE COURT: You may proceed.

19 MR. SORRELL: Thank you.

20 DIRECT EXAMINATION

21 BY MR. SORRELL:

22 Q. Would you state your name, please.

23 A. Kristy Lee Pennington.

24 Q. And how are you employed?

25 A. I am employed by the Florissant Police

1 Department.

2 Q. And what is your occupation at the  
3 Florissant Police Department?

4 A. I am the IT manager.

5 Q. What duties do you perform as an IT  
6 manager?

7 A. I maintain the computer systems, the  
8 software systems, the camera and surveillance  
9 systems for the police department.

10 Q. Is it fair to say you're a custodian of  
11 all the electronic data that's stored on behalf  
12 of the Florissant Police Department?

13 A. That is correct.

14 Q. Can you tell the jury how that, for  
15 example, radio calls are stored, how they're made  
16 by officers?

17 A. When an officer keys their mic, the  
18 traffic will automatically go to a database in  
19 St. Louis County where it's housed at an  
20 environmentally safe location free from basically  
21 disasters. And what will happen is we can pull  
22 it when we need it for another time.

23 Q. Okay. And are all the police  
24 departments in the County of St. Louis connected  
25 to this one service?

1 A. Yes, that is correct.

2 Q. And you have access to that service; is  
3 that right?

4 A. Yes.

5 Q. And are you able to pull off radio calls  
6 for a particular date and time?

7 A. Yes.

8 Q. Those calls are all made and stored in  
9 the regular course of business I assume?

10 A. Yes.

11 Q. And do those recordings -- they're just  
12 for the contact the officer has with the  
13 dispatcher back and forth: Is that fair?

14 A. Yes.

15 Q. Okay. And were you requested to make a  
16 DVD recording of certain radio calls that were  
17 made on the night of August 1st, 2018, between  
18 3:21 a.m. and 3:49 a.m.?

19 A. Yes, I was.

20 Q. And did you do that?

21 A. Yes.

22 MR. SORRELL: May I approach the  
23 witness from time to time?

24 BY MR. SORRELL:

25 Q. If I may, I'd like to hand you what I've



1 marked as Government's Exhibit 16 and ask you if  
2 you recognize this jacket?

3 A. Yes.

4 (Government's Exhibit No. 16, DVD,  
5 was identified.)

6 BY MR. SORRELL:

7 Q. In fact, is that the jacket for the DVD  
8 that you made for the radio calls that were made  
9 by the Florissant -- or by, actually, all the  
10 officers in St. Louis County on August 1st  
11 between 3:21 and 3:49 a.m.?

12 A. Yes, that is correct.

13 Q. So on that disk there are actually other  
14 officers' calls just at the correct times; is  
15 that right?

16 A. Yes.

17 Q. And are the times that are recorded  
18 accurate?

19 A. Yes, they are.

20 Q. So the DVD that you made listing all  
21 those calls lists both the time and the date of  
22 the event and where it was -- or who it was who  
23 has spoken back and forth between the dispatcher  
24 and the officer?

25 A. Yes, that is correct.

1 Q. Okay. And did you also print out for us  
2 what we call a CAD report?

3 A. Yes.

4 Q. And what is a CAD report?

5 A. It's the computer-aided dispatch system  
6 that we use for calls for the police officers,  
7 and that is the whole event for that call for  
8 service that the officer was on.

9 Q. Okay. And so it's basically a -- who  
10 keeps -- who actually enters the data for a CAD  
11 report?

12 A. The dispatcher will do it if the police  
13 officer indicates on the radio that he is doing a  
14 call for service, or the dispatcher will put it  
15 out on the radio.

16 Q. So the dispatcher will actually initiate  
17 a CAD report for an event and then keep track of  
18 what's going on for that particular event?

19 A. Yes, that is correct.

20 Q. Ma'am, I handed you what I've marked as  
21 Government's Exhibit 14. Can you tell the Court  
22 what that -- or jury what that exhibit is?

23 A. This is the CAD event report from our  
24 database.

25 (Government's Exhibit No. 14, CAD

1 Report, was identified.)

2 BY MR. SORRELL:

3 Q. And that's the report you printed off  
4 for us; is that right?

5 A. Yes.

6 Q. Now, as far as the radio calls sometimes  
7 they're somewhat difficult to understand; is that  
8 fair?

9 A. Yes.

10 Q. Officers speak in shorthand and in very  
11 brief conversations; is that also right?

12 A. Yes, that is correct.

13 Q. In this particular event, if I can play  
14 one of those calls, can you tell who's speaking  
15 and what's going on in this particular event?  
16 I'm sorry.

17 (A portion of Government's Number  
18 Exhibit 16 was played for the jury.)

19 A. In laymen's terms what happened is the  
20 officer initiated a traffic stop on dealer plate  
21 D11 -- I don't recall the rest of it -- on a red  
22 vehicle at the corner of Dunn Road.

23 Q. Okay. And basically that's just a  
24 normal start for a traffic stop; is that right?

25 A. Correct.

1 Q. And so the officer would keep on  
2 referring back to the dispatcher for different  
3 events: Is that also fair?

4 A. Yes.

5 Q. And do officers also call in when  
6 they're en route to assist?

7 A. Yes.

8 Q. So they would notify a dispatcher that  
9 they're going to another officer's location?

10 A. Correct.

11 Q. I'll play another one of these if I can.

12 (A portion of Government's Exhibit  
13 Number 16 was played for the jury.)

14 A. That call says 560. So unit 205 went 60  
15 with 208, so he was assisting car 208 at the  
16 time.

17 Q. All right. And that's Officer Fodde; is  
18 that right?

19 A. Correct.

20 Q. And that occurred at -- based on what's  
21 on the screen -- at 3:21 and 31 seconds; is that  
22 right?

23 A. Yes, that's correct.

24 Q. Okay. That should be 21 seconds after  
25 the officer first initiated the call; is that

1 right?

2 A. Correct.

3 Q. And that first officer was Officer Kemp;  
4 is that fair?

5 A. Yes, that's correct.

6 Q. I'm just trying to get the sequence of  
7 events. Now, so that sort of thing would  
8 continue all the way down through these call  
9 logs; is that fair?

10 A. Yes, that is correct.

11 Q. Okay. And all the way through to the  
12 end of the stop?

13 A. Yes.

14 Q. And the officers involved in this are  
15 known by their officer numbers; is that right? I  
16 mean, they refer to an officer number when  
17 they're reporting in to the dispatcher?

18 A. They report in as a unit ID.

19 Q. I'm sorry, yes, that's better?

20 A. Yes.

21 Q. So that's how that the County keeps  
22 track of each person and each unit?

23 A. Yes, that is correct.

24 Q. All right. And so the regular dispatch  
25 would basically give a time, date and what's

1 going on at the scene based on the officer's  
2 description to the dispatcher?

3 A. Yes, that is correct.

4 Q. All right.

5 MR. SORRELL: Nothing further at  
6 this time. Thank you.

7 MS. BOOTH: I have no questions.

8 THE COURT: You may step down.

9 (Witness excused.)

10 THE COURT: Call your next witness  
11 then.

12 JONATHAN KEMP,  
13 being produced and sworn, testified as follows:

14 THE COURT: You may proceed.

15 MR. SORRELL: Thank you.

16 DIRECT EXAMINATION

17 BY MR. SORRELL:

18 Q. Would you state your name, please.

19 A. Jonathan Kemp.

20 Q. And how are you employed?

21 A. By the City of Florissant.

22 Q. And in what department?

23 A. Florissant Police Department.

24 Q. How long have you worked for that  
25 department?

1           A.    Approximately five years.

2           Q.    What is your current rank with that  
3 department?

4           A.    Detective.

5           Q.    And on August 1st of 2018 were you a  
6 detective?

7           A.    No, sir.

8           Q.    What was your rank at that point?

9           A.    I was a patrol officer.

10          Q.    Just a regular duty patrol officer?

11          A.    Yes, sir.

12          Q.    And around on August 1st, 2018, at  
13 around 3:20 in the morning did you have occasion  
14 to see a red Ford Edge?

15          A.    Yes, sir.

16          Q.    And what caused you to notice the red  
17 Ford Edge?

18          A.    I observed the vehicle failed to stop at  
19 a stop sign.

20          Q.    And what was the street address of that  
21 stop sign?

22          A.    It was on Dunn Road just west of St.  
23 Michael Court in the City of Florissant.

24          Q.    Dunn Road, is that a street that just  
25 runs parallel to 270?

1 A. Yes, sir.

2 Q. Has lots of exits onto 270 and stop  
3 signs just after those exits; is that fair?

4 A. Correct.

5 Q. Now, what do you do after seeing the  
6 Ford Edge fail to stop at a stop sign?

7 A. I positioned my vehicle behind that  
8 vehicle, activated my emergency lights and siren  
9 and conducted a traffic stop of that vehicle.

10 Q. Now, when you saw the Ford Edge, when  
11 you first saw it, what direction is your car in  
12 relationship to the Ford Edge?

13 A. I would have been traveling in the  
14 opposite direction, so traveling eastbound.

15 Q. So you were meeting the Ford Edge?

16 A. Correct.

17 Q. Just in the other lane of travel?

18 A. Correct.

19 Q. And so how did you make the maneuver to  
20 get behind the Ford Edge?

21 A. When it was clear to safely conduct a  
22 U-turn on Dunn Road to position behind that  
23 vehicle.

24 Q. Okay. And had you seen that Ford Edge  
25 any time prior to that night?



1 A. No, sir.

2 Q. Did the Ford Edge stop soon after you  
3 activated your emergency lights?

4 A. Yes, sir.

5 Q. And what did you do then?

6 A. I exited my vehicle, approached the  
7 vehicle and made contact with the driver of that  
8 vehicle and advised them for the reason that I  
9 stopped.

10 Q. And the driver was who?

11 A. The driver was a Tiara Thorpe.

12 Q. Did you get any personal information  
13 from Ms. Thorpe?

14 A. Yes, sir.

15 Q. How did you get that information, or did  
16 you get it by question and answer, or did she  
17 give you her license?

18 A. She provided me with a Missouri driver's  
19 license.

20 Q. Now, was there a passenger in the car?

21 A. Yes, sir.

22 Q. And where was that passenger seated?

23 A. He was seated in the front right  
24 passenger seat.

25 Q. Male or female?

1           A.    It was a male.

2           Q.    Did you ask that man for his  
3    i d e n t i f i c a t i o n ?

4           A.    I did.

5           Q.    What did the man respond to?

6           A.    He advised me that he didn't have any  
7    i d e n t i f i c a t i o n   o r   a n y   d o c u m e n t a t i o n   o f   h i s  
8    i d e n t i t y ,   a n d   h e   p r o v i d e d   m e   w i t h   h i s   n a m e   a n d  
9    S o c i a l   S e c u r i t y   N u m b e r   o r   --

10          Q.    Okay. And did you run that information  
11   t o   s e e   --   t o   c h e c k   t h e   i d e n t i t y   o f   t h e s e   t w o  
12   p e o p l e ?

13          A.    Yes.

14          Q.    Now, how did you do that at first?

15          A.    I respond -- I have in-car computer  
16   w h e r e   I   d o   c a n   d o   a n   i n q u i r y   o f   t h e   s u b j e c t   o n  
17   t h a t   c o m p u t e r .

18          Q.    Basically just type the information into  
19   y o u r   c o m p u t e r   a n d   s e e   w h a t   i n f o r m a t i o n   i s  
20   r e p o r t e d   b a c k   o n   t h o s e   p e o p l e ?

21          A.    Correct.

22          Q.    And what does your computer tell you  
23   b a c k ?

24          A.    As far as Ms. Thorpe was that she had a  
25   v a l i d   d r i v e r ' s   l i c e n s e   a n d   n o   w a r r a n t s   f o r   h e r

1       arrest. And inquiry of the information provided  
2       by the passenger was inconsistent with his  
3       appearance to include, I believe, that the Social  
4       Security Number he provided was affiliated with a  
5       female subject.

6               Q. Okay. Do you remember the name that the  
7       male passenger provided to you?

8               A. I do not, sir.

9               Q. And the identifying information, it  
10      didn't come back as someone who was the same as  
11      the passenger that you saw?

12              A. Correct.

13              Q. Now, did you -- did you learn or did you  
14      also check Ms. Thorpe's information with your  
15      dispatcher?

16              A. Not through dispatch. Just on the car  
17      computer.

18              Q. You didn't need to do anything else  
19      there, did you?

20              A. Correct.

21              Q. Now, when you discovered this  
22      information about the male passenger that the  
23      numbers didn't match or that the identity didn't  
24      seem to match, what did you do?

25              A. I re-approached and made contact again

1 with that male passenger.

2 Q. Which side of the vehicle are you on at  
3 this time?

4 A. I believe that I had responded to the  
5 passenger side at that time.

6 Q. Okay. Because you wanted to talk  
7 directly to him?

8 A. Correct.

9 Q. And now continue.

10 A. So I re-approached to that passenger  
11 side, made contact with him. I advised him that  
12 I observed inconsistencies with the information  
13 that he provided. I requested his actual  
14 identification and advised him that it would be a  
15 lot easier to just give it to me roadside versus  
16 transporting him back to the police department to  
17 have to identify him or fingerprint him to obtain  
18 his identification.

19 Q. Okay. And did you also mention that it  
20 might make it easier on himself?

21 A. Yes, sir.

22 Q. And how did the passenger respond to  
23 that information?

24 A. He provided me with a new name and  
25 Social Security and name of Barrett Swan at that

1 time.

2 Q. And so what did you do with that  
3 information?

4 A. I responded back to my patrol vehicle  
5 again and did a computer inquiry of the new  
6 information he provided.

7 Q. What did you find out about the identity  
8 of Mr. Barrett Swan?

9 A. That there was an active federal arrest  
10 warrant for that subject.

11 Q. Okay. Did you take some steps to verify  
12 the existence of that warrant?

13 A. I did.

14 Q. What did you do?

15 A. Then I called it through the radio to  
16 dispatch for them to do a second inquiry just to  
17 verify the information and that it was an active  
18 warrant.

19 Q. Okay. And did the dispatcher do exactly  
20 that?

21 A. Yes, sir.

22 Q. And are you familiar with the radio  
23 logs -- I mean, the radio call system used by  
24 your department?

25 A. Yes.

1           Q.   And, in fact, you've listened to the  
2   radio calls that were set out or broken up on the  
3   Exhibit 16 by Kristy Pennington; is that right?

4           A.   Yes, sir.

5           Q.   Did you prepare a log of the events that  
6   occurred on that night?

7           A.   Yes, sir.

8                     MR. SORRELL: May I approach the  
9   witness, Your Honor?

10                    THE COURT: Yes.

11           BY MR. SORRELL:

12           Q.   Sir, I've shown you what's been marked  
13   as Exhibit 15. Can you tell the Court what that  
14   exhibit is, please.

15           A.   It's a summary log of the times and an  
16   explanation of the radio transmissions that  
17   occurred that night relevant to my traffic stop.

18                     (Government's Exhibit No. 15,  
19   Summary Log, was identified.)

20           BY MR. SORRELL:

21           Q.   Okay. That's just prepared by you; is  
22   that fair?

23           A.   Correct.

24           Q.   Let me retrieve that.

25           A.   Sure.

1 Q. Now, do you call your dispatcher when  
2 you make a stop?

3 A. Yes.

4 Q. All right. Let me play one of the first  
5 one of these messages and see if you can  
6 recognize that.

7 (A portion of Government's Exhibit  
8 Number 16 was played for the jury.)

9 BY MR. SORRELL:

10 Q. Do you recognize that call, sir?

11 A. Yes, sir.

12 Q. What is that?

13 A. That's me initially calling with the  
14 traffic stop and advising the plate, make and  
15 model of the vehicle in that location.

16 Q. And do you see the exhibit on the screen  
17 in front of you where that one is highlighted at  
18 the very top?

19 A. Yes.

20 Q. And does that -- is that the one that  
21 was made at 3:21:10 on the night of August 1st?

22 A. Correct.

23 Q. So that's the first time you call in to  
24 the dispatcher; is that fair?

25 A. Yes, sir.

1 Q. And is the car stopped at that point, or  
2 are you still in the process of getting the car  
3 pulled over?

4 A. Typically once I activate my emergency  
5 lights and sirens is when I will call out a  
6 traffic stop, but sometimes it may be right after  
7 it's stopped.

8 Q. But it's just right around that time  
9 either shortly before the stop or right at the  
10 stop?

11 A. Correct.

12 Q. Okay. And do other officers arrive to  
13 assist in that -- in that event?

14 A. Yes. Eventually, yes, sir.

15 Q. And did an officer arrive to assist on  
16 this stop?

17 A. Yes.

18 Q. Let me let you listen to another one of  
19 these.

20 (A portion of Government's Exhibit  
21 Number 16 was played for the jury.)

22 BY MR. SORRELL:

23 Q. Do you recognize that one even though  
24 it's very short?

25 A. Yes, sir.



1 Q. And what is that?

2 A. That is another patrol officer called  
3 205 on advising that he is en route to my  
4 location to assist.

5 Q. Who is 205?

6 A. His name is Officer Kevin Fodde.

7 Q. Okay. And did Officer Fodde then show  
8 up during this traffic stop?

9 A. Yes.

10 Q. Now, you've already gotten -- taken us  
11 through point where you're going up and talking  
12 to Mr. Swan, and you got his information and come  
13 back. Has Mr. Fodde arrived at the scene by this  
14 point?

15 A. It was right around the time shortly  
16 after that that I did the radio into dispatch for  
17 the inquiry of the subject.

18 Q. Okay. And what would Officer Fodde's  
19 role have been on this stop?

20 A. Just as an assist officer on this stop.  
21 He -- more or less officer safety just stood by  
22 to provide safety for myself as well as the  
23 occupants inside the vehicle.

24 Q. Okay. So do you know where he was  
25 stationed when he pulls up? Do you know where he

1 stands?

2 A. Once he exits his vehicle, he's parked  
3 behind mine. He walked up and would place  
4 himself near the rear passenger side of the  
5 vehicle that I had stopped.

6 Q. Okay. And so did you contact dispatch  
7 to start trying to find out more about Mr. Swan?

8 A. Yes, sir.

9 Q. This thing is touchy. Pardon me. If  
10 you'd listen to this one, please.

11 (A portion of Government's Exhibit  
12 Number 16 was played for the jury.)

13 BY MR. SORRELL:

14 Q. And do you recognize that voice?

15 A. Yes, sir.

16 Q. What is that?

17 A. That's me requesting dispatch to advise  
18 when they're clear for me to run a subject over  
19 the radio.

20 Q. Okay. And did you then provide the  
21 subject pedigree?

22 A. I did.

23 Q. All right. Now, I'm going to refer to  
24 the next one at 3:30:29.

25 (A portion of Government's Exhibit

1 Number 16 was played for the jury.)

2 Q. So is that the first time you called the  
3 dispatcher about Mr. Swan's identity?

4 A. Yes, sir.

5 Q. Is Mr. Swan still in the car at this  
6 time?

7 A. Yes, sir.

8 Q. And what about the driver?

9 A. Yes, sir.

10 Q. Okay. So you still haven't really  
11 verified everything you want to know at this  
12 point; is that fair?

13 A. Correct.

14 Q. At 3:30:29, which would have been almost  
15 10 minutes after he'd been at the stop, 9 minutes  
16 or so?

17 A. Correct.

18 Q. Okay. So then did the dispatch  
19 basically provide the information on Mr. Swan?

20 A. Yes, sir.

21 Q. That happened, I believe, at 3:32:35.

22 (A portion of Government's Exhibit  
23 Number 16 was played for the jury.)

24 BY MR. SORRELL:

25 Q. Did you hear that, sir? Let me stop

1       that.

2                   THE COURT:   Mr. Anderson, are you  
3       having trouble staying awake?

4                   JUROR NUMBER 7 ANDERSON:   Yeah.

5                   THE COURT:   Is there a problem or --

6                   JUROR NUMBER 7 ANDERSON:   I didn't  
7       take my medicine.

8                   THE COURT:   Do you have medicine  
9       with you?

10                  JUROR NUMBER 7 ANDERSON:   Yeah.

11                  THE COURT:   Do you need to take some  
12       then?

13                  JUROR NUMBER 7 ANDERSON:   Yeah.

14                  THE COURT:   Okay.   Why don't we take  
15       a short recess for that purpose, and we'll call  
16       you back in.   Go to the jury room and remember  
17       the admonition I gave you earlier not to discuss  
18       the case.   We'll call you back in in just a very  
19       short time.

20                         So will that take care of the  
21       problem?

22                  JUROR NUMBER 7 ANDERSON:   It should.

23                  THE COURT:   Okay.

24                         (Proceedings resumed in open court  
25       outside the presence of the jury.)

1 THE COURT: Let's go back on the  
2 record while we're waiting for them to come back.  
3 The juror in question who was falling asleep has  
4 said that he was having trouble staying awake.  
5 He's also one of the jurors who was the subject  
6 of our questions beforehand, so this is twice  
7 now.

8 If we continue to have a problem  
9 with him, it's my intention to excuse him and  
10 substitute the alternate for him. So hopefully  
11 we won't come to that.

12 MR. SORRELL: Yes, sir.

13 THE COURT: Are they ready?

14 THE CLERK: They're ready.

15 (Proceedings resumed in open court.)

16 THE COURT: Be seated, please.

17 Mr. Anderson, are you okay now?

18 JUROR NUMBER 7 ANDERSON: Yes, sir.

19 THE COURT: Okay. You may proceed.

20 MR. SORRELL: Thank you.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. SORRELL:

23 Q. Officer, I believe we ended up with a  
24 radio call where your -- the radio dispatcher had  
25 acknowledged Mr. Swan's arrest warrant. Do you

1 remember that?

2 A. Yes.

3 Q. And did you acknowledge that call?

4 A. Yes, sir.

5 (A portion of Government's Exhibit  
6 Number 16 was played for the jury.)

7 BY MR. SORRELL:

8 Q. Is that your acknowledgment of the radio  
9 dispatcher call? Let me show you on the screen  
10 where it is. The one marked 3:32:55 right above  
11 is the one that I just played for the -- where  
12 the radio dispatcher gave you the information  
13 back?

14 A. Yes. And that would be it.

15 Q. Okay. And so what did you do as soon as  
16 you heard the information about the arrest  
17 warrant on Mr. Swan?

18 A. That was whenever I had my -- well, I  
19 had requested for dispatch to verify the arrest  
20 warrant. And then I proceeded to exit my  
21 vehicle. At that time my assist officer had  
22 arrived on the scene. So I contacted him  
23 before I made contact with Mr. Swan and just  
24 advised him of the arrest warrant, you know, for  
25 officer safety reasons.

1 I then proceeded up to the passenger  
2 side of the vehicle where I requested Mr. Swan to  
3 step out of the car, which he did. I advised him  
4 of the warrant and placed him into handcuffs.

5 Q. Okay. And Mr. Swan, is it fair to say  
6 he got out of the car willingly and didn't cause  
7 any -- didn't resist in any way, shape or form,  
8 did he?

9 A. Correct, sir.

10 Q. Was the car door closed when you walked  
11 up to Mr. Swan's side of the car?

12 A. Yes, sir.

13 Q. And how long did it stay closed? Did  
14 you explain anything to him through the window,  
15 or did you just get him out first?

16 A. We requested him to exit the vehicle  
17 through the window. At that time he -- the door  
18 began to open.

19 Q. Okay. All right. So at least the door  
20 was closed when you first walked up?

21 A. Correct.

22 Q. And can you tell the jury what happened  
23 as soon as Mr. Swan stepped outside of the car?  
24 Go over that sequence, if you would, please.

25 A. So after requesting him to exit the

1 vehicle, as I'm placing him in handcuffs, I  
2 observed a firearm or handgun sitting on the  
3 passenger seat where Mr. Swan's previously  
4 sitting. I then directed --

5 Q. Let me stop you just a second --

6 A. Yes.

7 Q. -- and slow you down.

8 Did you -- when you look over at the  
9 seat, did you immediately recognize that item as  
10 being a firearm?

11 A. No.

12 Q. What did you first think it was?

13 A. My first impression with the position of  
14 the firearm I believed it was a portion of the  
15 seat belt where the seat belt buckles into.

16 Q. And can you describe to the jury how the  
17 firearm was in the seat where Mr. Swan had  
18 exited.

19 A. The way that it was positioned in the  
20 seat would have been with the barrel was facing  
21 toward the passenger door with the magazine and  
22 grip portion facing towards the glove box  
23 compartment where essentially the butt of the gun  
24 would have been where that seat belt holder would  
25 be, and the slide of the firearm was resting



1       against the back of the seat.

2               Q.   And how far or where was it positioned  
3   in terms of being to the right or left of  
4   Mr. Swan?

5               A.   It would have been on his left.

6               Q.   Okay. But all the way over?

7               A.   Correct. But against that seat belt  
8   holder.

9               Q.   And was the handle up or pointed up or  
10   was pointed horizontally?

11              A.   It was pointed down basically laying  
12   flat on the seat pointing towards the glove  
13   compartment.

14              Q.   Okay. Now, at what point did you see  
15   the handgun in terms of handcuffing Mr. Swan?  
16   I'm just trying to make sure I know what had then  
17   happened when.

18              A.   Sure. So as he's exiting, you know,  
19   it's initially kind of difficult to be on the  
20   same side of the vehicle. So as I escort him up  
21   just a little bit towards -- a little bit more  
22   towards the passenger door and I'm able to kind  
23   of get in between the passenger doorframe and the  
24   vehicle itself on that side of the vehicle as  
25   well as my put flashlight on him, so it would

1 have been at that time after Mr. Swan's  
2 handcuffed and I was more positioned between the  
3 passenger door and the actual vehicle itself.

4 Q. All right. Where was Ms. Thorpe when  
5 you first saw the handgun?

6 A. She was still seated in the driver's  
7 seat.

8 Q. All right. And how did this progress  
9 from that point to what did you do after you saw  
10 the firearm?

11 A. So after observing the firearm, I  
12 directed Mr. Swan to my assist officer that was  
13 at the rear of the vehicle that he was seated in.  
14 And after I directed him to the assist officer, I  
15 requested Ms. Thorpe to exit the vehicle, which  
16 she did. At that time I retrieved the firearm  
17 from the side of the vehicle.

18 Q. Okay. Did you make that firearm safe?

19 A. Yes, sir.

20 Q. And what did you do to make it safe?

21 A. I released the magazine or detached the  
22 magazine from the handgun and cleared the  
23 chamber.

24 Q. Okay. At that time were you wearing  
25 plastic gloves or anything?

1 A. No, sir.

2 Q. And what was your reason for picking it  
3 up that quickly?

4 A. Just officer safety. It was immediately  
5 in the open, the firearm needed to be secured.

6 Q. Sir, I've handed you a box which has  
7 been marked as Exhibit No. 11. Would you take a  
8 look in that box and tell me what's in there,  
9 please.

10 A. This is the firearm that I seized that  
11 night from the subject.

12 (Government's Exhibit No. 11, Box,  
13 was identified.)

14 BY MR. SORRELL:

15 Q. Is there ammunition in that box?

16 A. Yes, sir.

17 Q. And would you display that to the jury,  
18 please. Just hold the box up. Oh, okay. You  
19 can take the pistol out. It might be secured in  
20 there, but would you hold the pistol up?

21 And what kind of pistol is that, what  
22 brand?

23 A. It's a Smith & Wesson M&P9 Shield.

24 Q. Nine is a nine-millimeter caliber?

25 A. Yes, sir.

1 Q. And is that -- is that the firearm you  
2 seized that night?

3 A. Yes, sir.

4 Q. And how can you tell that?

5 A. Through the serial number.

6 Q. Okay. So -- and also is the box -- does  
7 the exhibit box have your initials or name on it?

8 A. Yes, sir, it does.

9 Q. And you can put that back in the box, if  
10 you would, please.

11 And the ammunition for that that was  
12 seized with that is just in the box, I believe,  
13 in a Ziploc bag; is that fair?

14 A. Yes, sir.

15 Q. Okay. Then after you seized that  
16 firearm, did you do anything else with the  
17 firearm?

18 A. Yes. It was forwarded to the St. Louis  
19 County Lab for ballistic testing.

20 Q. Let me ask you about that. Did you make  
21 any requests of the dispatcher concerning the  
22 firearm at the scene?

23 A. Yes, sir. I conducted an inquiry  
24 through dispatch of the serial number on the  
25 firearm.

1 Q. Okay. All right. So the last time you  
2 talked with the dispatcher when you learned about  
3 the warrant was at 3 o'clock or 32 minutes after  
4 3:00 at the 58 second mark; is that right?

5 A. Yes, sir.

6 Q. Let's look at the next one that's your  
7 call, which is 3:36:31. Would you listen to  
8 this, please.

9 (A portion of Government's Exhibit  
10 Number 16 was played for the jury.

11 BY MR. SORRELL:

12 Q. Can you tell the jury what that request  
13 is?

14 A. That's me radioing into dispatch  
15 requesting for them to do a computer inquiry of  
16 the serial number on the firearm.

17 Q. So at that time you had already gone up  
18 to the car and informed Mr. Swan of the warrant,  
19 got him out, handcuffed him, asked Ms. Thorpe to  
20 get out, seized the gun, unloaded it and then got  
21 on back to your car to check the serial number to  
22 check to see if it's stolen?

23 A. Correct.

24 Q. Okay. And so from the time you learned  
25 of the existence of the warrant until you checked

1 the serial number for the gun is, what, about  
2 three and a half minutes?

3 A. Yes, sir.

4 Q. Based on your -- on the calls that were  
5 made on the radio --

6 A. Correct.

7 Q. -- to the dispatcher?

8 Okay. And then the calls go normally  
9 until it stops; is that right?

10 A. Yes.

11 Q. I believe it would have ended around  
12 3:49?

13 A. Yes, sir.

14 Q. Now, did you give Ms. Thorpe any traffic  
15 tickets?

16 A. She was issued some, yes, sir.

17 Q. Okay. And did Mr. Swan make any request  
18 of you to speak to Ms. Thorpe while still at the  
19 scene of the traffic stop?

20 A. Yes, sir.

21 Q. What happened regarding that request?

22 A. He requested -- he requested to say  
23 goodbye to Ms. Thorpe, which I allowed and  
24 escorted Ms. Thorpe to the rear passenger side of  
25 the vehicle. Mr. Swan was seated in the back of

1 my patrol vehicle. I opened the door and let her  
2 speak to him at that time, and he made a  
3 statement to her during that time of "I'm  
4 finished, I'm done," something to that effect.

5 Q. All right. And did they speak briefly  
6 in the back of your car?

7 A. Yes, sir.

8 Q. And then Ms. Thorpe went back to her  
9 car?

10 A. Correct.

11 Q. And then the tickets were issued and the  
12 scene was clear; is that fair?

13 A. Yes, sir.

14 Q. Okay. And do you -- do you issue the  
15 tickets at the end of the stop?

16 A. Typically, yes. Towards the end of the  
17 stop.

18 Q. Are those -- the ticket times always  
19 printed on the tickets when they're issued?

20 A. At the time they're generated, yes, sir.

21 Q. And how are tickets generated if you  
22 want to issue a traffic ticket to a person?

23 A. So we have what's called mobile  
24 ticketing. It's a program inside of our computer  
25 in our cars where it prints the tickets out. So

1 we enter in either a license number, a driver's  
2 license number, a Social Security Number, and it  
3 inquires all that subject's pedigree.

4 And then I do the same with the vehicle  
5 with an identification number or a license plate,  
6 and it calculates almost all the fields inside of  
7 the traffic summons. So then I just put whatever  
8 violation was done and then print the ticket.

9 Q. And does the machine also print the time  
10 the ticket is issued?

11 A. Yes, sir.

12 Q. Do you have any way of changing that  
13 time?

14 A. No, sir.

15 Q. And do you know what time this ticket  
16 was issued?

17 A. I believe it was at 3:44 a.m.

18 Q. And if I -- that would have been about  
19 five minutes before the stop ended at 3:49; is  
20 that right?

21 A. Correct.

22 Q. And you cleared the scene and took  
23 Mr. Swan back to the Florissant police station?

24 A. Yes, sir.

25 Q. Ms. Thorpe was just simply released to



1 go on her way; is that right?

2 A. Yes, sir.

3 Q. She told you at the scene that the gun  
4 belonged to her; is that fair?

5 A. Correct.

6 Q. And it did turn out to be her -- the gun  
7 that she had purchased?

8 A. Correct.

9 Q. And when you seized this, how many  
10 magazines did you seize with the gun?

11 A. Just one magazine that was inside the  
12 firearm.

13 Q. Did you search the car?

14 A. Not to my recollection, no.

15 Q. Okay. You didn't seize anything else  
16 from the car, did you?

17 A. No, sir.

18 Q. And what was done to Mr. Swan when you  
19 got back to the police station?

20 A. He was escorted into our holdover  
21 facility, which is more or less a temporary jail.  
22 Inside there he is booked into the computer  
23 system as being arrested, his property is  
24 inventoried, and he's dressed out into a jumpsuit  
25 waiting to be transported out to the county jail

1 and in this case being -- waiting to be  
2 transported on the arrest warrant.

3 Q. And did you speak to Mr. Swan briefly  
4 about the firearm?

5 A. Yes, sir.

6 Q. And what did you tell Mr. Swan?

7 A. Prior to getting him dressed into a  
8 jumpsuit, I advised him that upon completion of  
9 the booking process, which is everything I just  
10 described, that I would escort him up to an  
11 interview room so that we could discuss what  
12 was -- the firearm that was located inside the  
13 vehicle.

14 Q. And did Mr. Swan make a statement that  
15 starts with, "We both know"?

16 A. Yes, sir.

17 Q. And would you tell the jury what that  
18 statement was?

19 A. Yes, sir. He stated, "We both know what  
20 you found in the vehicle, and I'd rather be in a  
21 position that I'm in now than one that I was in  
22 in the past when I was shot and didn't have  
23 anything on me."

24 Q. At that time did Mr. Swan make any  
25 statements to you about whether he had been shot

1 before?

2 A. No, sir.

3 Q. Did you have any idea that Mr. Swan had  
4 been shot before?

5 A. No, sir.

6 Q. Now, is it fair to say that that -- your  
7 report of his statement is basically the  
8 substance of Mr. Swan's statement, not the exact  
9 words?

10 A. Correct.

11 Q. So there could be a word or two altered;  
12 is that fair?

13 A. Yes, sir.

14 Q. Is the meaning changed in any way, shape  
15 or form?

16 A. No, sir.

17 Q. And did you later on speak with Officer  
18 Brian Eggers?

19 A. Yes, sir.

20 Q. Did you report that statement to him?

21 A. Yes, sir.

22 Q. Now, did you write a report on this  
23 event?

24 A. Yes, sir.

25 Q. And it's fair to say that your report

1 doesn't include that statement, does it?

2 A. No, it does not.

3 Q. But you told Officer Eggers about the  
4 statement; is that right?

5 A. Yes, sir.

6 Q. And did you tell him about it at what  
7 point in time?

8 A. During a phone conversation. I  
9 initially contacted him in reference to Mr. Swan  
10 being arrested, and, during our conversation, he  
11 relayed to me that Mr. Swan had been shot, and at  
12 that time I recalled the statement and stated to  
13 the effect how it made sense because he had made  
14 that statement to me and relayed the statement  
15 that Mr. Swan made to me to Officer Eggers at  
16 that time.

17 Q. Okay. And then Officer Eggers put it in  
18 his statement --

19 A. Correct.

20 Q. -- or report?

21 A. Yes, sir.

22 Q. And what day was this report made to  
23 Officer Eggers?

24 A. On August the 1st, 2018.

25 Q. About what time or around what time?

1           A. I believe it was prior to me getting off  
2 shift maybe around like 5:00 a.m., 5:00 or  
3 6:00 a.m.

4           Q. So at the same time?

5           A. Yes, sir.

6           Q. And you've listened to all the radio  
7 traffic on Government's Exhibit 16 and all that  
8 that you made is accurate as far as the times  
9 made and the substance of the calls that were  
10 made?

11          A. Yes, sir.

12          Q. Okay.

13                   MR. SORRELL: I believe that's all I  
14 have, Your Honor. Thank you.

15                   THE COURT: Cross-examination.

16                   CROSS-EXAMINATION

17 BY MS. BOOTH:

18           Q. Detective Kemp, when you first made  
19 contact with Ms. Thorpe and Mr. Swan after you  
20 stopped the vehicle, neither of them were  
21 combative, rude or disrespectful in any way to  
22 you?

23           A. No, ma'am.

24           Q. They were cooperating with you?

25           A. Outside of the initial pedigree

1 incident.

2 Q. Yes, sir.

3 And, again, Ms. Thorpe was seated in the  
4 driver's seat?

5 A. Correct.

6 Q. And Mr. Swan is seated in the front  
7 passenger seat?

8 A. Correct.

9 Q. And when you first contacted Mr. Swan,  
10 he was alert and acknowledged your presence by  
11 talking to you?

12 A. Correct.

13 Q. He didn't try to get to you or harm you  
14 in any way?

15 A. No, ma'am.

16 Q. And it was very clear that you were a  
17 police officer when you were speaking with  
18 Mr. Swan?

19 A. Yes, ma'am.

20 Q. In addition to asking for Ms. Thorpe's  
21 identification you asked for Mr. Swan's as well?

22 A. Yes, ma'am.

23 Q. And he didn't ignore you when you asked  
24 him for his identification?

25 A. No, ma'am.

1 Q. And he gave you some identification  
2 verbally?

3 A. Correct.

4 Q. And when you walked back to your police  
5 car to check that information as well as  
6 Ms. Thorpe's information, it was clear to the  
7 occupants of the car that you were returning  
8 later; correct?

9 A. I can't speak on their behalf, but as I  
10 was -- as I'm approaching the vehicle again?

11 Q. I'm sorry, Detective Kemp, I didn't  
12 phrase that very well. Let me ask again.

13 After you got the identifying  
14 information from Ms. Thorpe and Mr. Swan the  
15 first time, you told them to stay here, I have to  
16 go check this information in your police car,  
17 which was parked behind them; correct?

18 A. Correct.

19 Q. Okay. So it was -- you made it clear to  
20 them they weren't free to drive away, you were  
21 coming back?

22 A. Correct.

23 Q. And when you walked back to your police  
24 car to check this information on your computer,  
25 no other police car was stationed there, no other

1 police officer was there at the car to watch Ms.  
2 Thorpe and Mr. Swan; correct?

3 A. Correct.

4 Q. So they were essentially left  
5 unattended?

6 A. Yes, ma'am.

7 Q. Free to move about and do whatever they  
8 wanted in the car?

9 A. Yes, ma'am.

10 Q. After learning that information Mr. Swan  
11 gave you wasn't accurate, you returned to the car  
12 to confront him about that fact; correct?

13 A. Correct.

14 Q. And at this point he remains respectful  
15 and doesn't switch his attitude to combative or  
16 angry; correct?

17 A. Correct.

18 Q. And you essentially tell him that the  
19 information he gave you didn't add up, and he  
20 might as well tell you who he is or else you're  
21 going to have to go to the police department for  
22 some fingerprinting; correct?

23 A. Correct.

24 Q. And he responded immediately by telling  
25 you his name was Barrett Swan?



1 A. Correct.

2 Q. And he gave you his Social Security  
3 Number?

4 A. Yes, ma'am.

5 Q. So then at that point you have to return  
6 back to your police car to check that information  
7 about Barrett Swan; correct?

8 A. Correct.

9 Q. And, again, Ms. Thorpe and Ms. Swan or  
10 Mr. Swan are left unattended in Ms. Thorpe's car;  
11 correct?

12 A. Correct.

13 Q. Free to move about and do whatever they  
14 wanted, no one was watching them; correct?

15 A. Yes, ma'am.

16 Q. And while you're back at your police car  
17 checking the information on Barrett Swan, it  
18 takes a few minutes to do that?

19 A. Yes, ma'am.

20 Q. And you learn that Mr. Swan has an  
21 active federal warrant for his arrest?

22 A. Correct.

23 Q. You respond back to the car and ask  
24 Mr. Swan to step out, advising him that he was  
25 under arrest for the active federal warrant?

1 A. Correct.

2 Q. And he immediately steps out of the  
3 vehicle without any delay?

4 A. Yes, ma'am.

5 Q. He doesn't try to stall or distract you  
6 in any way from him being removed from the car?

7 A. No, ma'am.

8 Q. And, again, he's still respectful and  
9 hasn't switched his attitude to combative or  
10 rude, or anything like that?

11 A. Correct.

12 Q. And Ms. Thorpe remains respectful and  
13 cooperative with you as well?

14 A. Yes, ma'am.

15 Q. So at this moment when Mr. Swan gets out  
16 of the car, it's been about 10 to 15 minutes  
17 since the time you initially stopped the vehicle?

18 A. I believe it is approximately, yes.

19 Q. And it's your testimony that it is at  
20 this moment when Mr. Swan steps from the car you  
21 see that firearm on the passenger seat?

22 A. Correct.

23 Q. Now, Detective Kemp, back in August of  
24 2018 you've been a police officer for almost  
25 about four years?

1           A.    Yes.    I believe so, yes.

2           Q.    Or four and a half might be more  
3 accurate?

4           A.    A little over four years, yes, ma'am.

5           Q.    Yes, sir.    So it's fair to say that you  
6 were not a novice police officer or inexperienced  
7 at that point?

8           A.    I had had four and a half years.    Yes,  
9 roughly four -- a little over four years in.  
10 Some might consider that still a novice, but I  
11 had some experience, yes.

12          Q.    So you knew at that point that you could  
13 call out an evidence technician from the police  
14 department and take evidentiary photos if need  
15 be?

16          A.    Yes, you could.

17          Q.    Yes.    But you had done that before?

18          A.    Correct.

19          Q.    Again, this wasn't your first week on  
20 the job and you didn't know that you could call  
21 someone to take photos of where the firearm was  
22 found; correct?

23          A.    Correct.

24          Q.    But that wasn't done in this case?

25          A.    No, ma'am.

1 Q. And by the time you located the gun and  
2 had Mr. Swan out of the car another officer was  
3 there, Officer Kevin Fodde; correct?

4 A. Correct.

5 Q. And you could have had Officer Fodde  
6 take Mr. Swan in to the station for processing;  
7 correct?

8 A. Correct.

9 Q. And you could have remained behind and  
10 called an evidence technician to photograph where  
11 you found the firearm in the car?

12 A. Yes, ma'am.

13 Q. But that didn't happen in this case?

14 A. No, ma'am.

15 Q. Do you have any photographs that we can  
16 show the jury here today of any photos that were  
17 taken at the scene?

18 A. I do not, no, ma'am.

19 Q. And by the time you sat down to write  
20 your police narrative on this matter you had  
21 written many police narratives before; correct?

22 A. Correct.

23 Q. Once again, not your first week on the  
24 job; correct?

25 A. Correct.

1 Q. And so you knew that your police  
2 narrative must include all important facts; is  
3 that fair to say?

4 A. Yes, ma'am.

5 Q. It must be thorough?

6 A. Yes.

7 Q. Now, you testified here today that, in  
8 fact, Tiara Thorpe told you at the scene that the  
9 gun was hers; correct?

10 A. Correct.

11 Q. And that's not reflected in your police  
12 report; correct?

13 A. Correct.

14 Q. And you never told Agent Eggers that  
15 information when you spoke to him on the phone;  
16 correct?

17 A. Correct.

18 Q. And the first time that information was  
19 disclosed was when you testified in a previous  
20 hearing on this matter, correct, in this  
21 courthouse?

22 A. Prior to speaking with you, yes. It  
23 was, yes.

24 Q. It's fair to say that any fact related  
25 to the ownership of the gun you found is an

1 important fact?

2 A. One more time?

3 Q. It's fair to say that any fact related  
4 to the ownership of the gun you found is an  
5 important fact?

6 A. Yes. I mean, at that time of the stop I  
7 couldn't prove it to be her firearm, and due to  
8 the constructive possession that was why I had  
9 requested that she had the documentation to bring  
10 it up to the police department, and I would  
11 attach it.

12 Q. And you never included the fact that  
13 Ms. Thorpe told you it was her gun in your police  
14 report, though?

15 A. No, ma'am.

16 Q. And you told her, though, that if she  
17 had proof that that was her firearm, you would  
18 attach it to the report?

19 A. Correct.

20 Q. And thereafter -- soon thereafter  
21 Detective Cork in your police department did an  
22 ATF trace on the firearm; correct?

23 A. Yes. I believe that's their procedure,  
24 yes, ma'am.

25 Q. And an ATF trace is where the ATF is

1 asked to find out who is the initial purchaser of  
2 this firearm; correct?

3 A. Correct.

4 Q. I'm going to show you -- I'm going to  
5 show you Defendant's Exhibit R. This is the  
6 firearms trace request done by the detective  
7 in -- I'm sorry, the evidence technician in your  
8 department, Scott Cork; right?

9 A. Correct.

10 (Defendant's Exhibit No. R, ATF  
11 Trace Report, was identified.)

12 BY MS. BOOTH:

13 Q. And it indicates that the request date  
14 was August the 1st of 2018; correct?

15 A. Yes, ma'am.

16 Q. And that's the day that you arrested  
17 Mr. Swan?

18 A. Yes.

19 Q. And you said that if any information  
20 Ms. Thorpe could give you to prove that this was  
21 her firearm, you'd attach it to the report and  
22 include it in the report; correct?

23 A. Correct.

24 Q. The completion date when the Florissant  
25 Police Department -- your police department --

1 received this report is August 14th of 2018;  
2 correct?

3 A. Yes. That's what it states, correct.

4 Q. Thirteen days after the request was  
5 made?

6 A. Correct.

7 Q. Who was the purchaser of the firearm  
8 according to the ATF trace report?

9 A. Tiara Davon Thorpe.

10 Q. And that's the Ms. Thorpe that was in  
11 the car with Mr. Swan; correct?

12 A. Correct.

13 Q. And this indicates they she purchased  
14 the firearm on March 3rd of 2017 where my finger  
15 is pointing, sir, if you can see.

16 A. I can see that it's 2017. I can't see  
17 the other portion on the monitor, though.

18 MS. BOOTH: Your Honor, may I  
19 approach Detective Kemp? I think he could see it  
20 better if I approached him.

21 THE COURT: I know. This is not in  
22 dispute, though, is it? Counsel, do you want to  
23 stipulate?

24 MR. SORRELL: I would. We already  
25 have.



1 THE COURT: Yeah.

2 MS. BOOTH: All right.

3 THE COURT: Okay.

4 BY MS. BOOTH:

5 Q. It says she purchased the firearm in  
6 2017 and from Gander Mountain; correct?

7 A. Correct.

8 Q. In Chesterfield, Missouri.

9 A. Correct.

10 Q. So this information was in your office  
11 on August the 14th, your police department, but  
12 yet we still don't see any information about  
13 Ms. Thorpe being the firearm owner in your police  
14 report; correct?

15 A. Correct.

16 Q. Is it fair to say that any statement  
17 that a defendant makes to you in reference to a  
18 gun in an illegal possession gun case is an  
19 important fact as well?

20 A. Yes, ma'am.

21 Q. And it's been your habit in the past  
22 regarding your narratives about defendants in  
23 illegal gun possession matters to specifically  
24 note in your report what a defendant said about a  
25 gun if they said anything about a gun at all?

1           A. Typically, yes, ma'am.

2           Q. But we don't see in your report any  
3 inculminating statement by Mr. Swan noted, do we?

4           A. Correct.

5           Q. After you spoke with Agent Eggers,  
6 Detective Kemp, did he request that you file a  
7 supplemental report giving the details of this  
8 statement that you say Mr. Swan made to you?

9           A. Not that I specifically recall. It was  
10 my belief that he was going to include that  
11 statement inside of the report if -- in his  
12 report if it was needed.

13          Q. But Mr. Swan didn't make that alleged  
14 statement to Agent Eggers; correct?

15          A. Correct.

16          Q. You say he made it to you?

17          A. Correct.

18          Q. And, again, you don't really remember  
19 the statement verbatim; is that fair to say?

20          A. At this time, correct, yes, I do not  
21 recall specifically right now.

22          Q. And that statement he made to you isn't  
23 recorded in any way; correct?

24          A. Correct.

25          Q. There's no body cam video of him making

1       that statement?

2             A.    No.

3             Q.    And as far as booking videos from the  
4       police department, there's no audio to hear what  
5       anyone has to say when being booked in; correct?

6             A.    Correct.

7             Q.    Your police report doesn't reflect there  
8       was a window of time between Mr. Swan giving you  
9       a false name, him being left in the car  
10      unattended, and you returning later with federal  
11      warrant information; correct?

12            A.    Correct.

13            Q.    Your police report indicates that  
14      Mr. Swan gave you his correct identifying  
15      information straight away?

16            A.    I mean, the report -- I don't say  
17      immediately provided me with that information,  
18      but it does not notate the false information.

19            Q.    So your report doesn't reflect that  
20      there was a window of time between Mr. Swan  
21      giving you false information and his correct  
22      information; correct?

23            A.    That is correct.

24            Q.    Why wouldn't you note that in your  
25      police report?

1           A. It's fairly common that somebody  
2 provides you with a false identity sometimes if  
3 they have an arrest warrant, and sometimes they  
4 just don't want to provide you with the proper  
5 pedigree information. And in this case -- and  
6 typically I don't notate any sort -- anything of  
7 that sort unless I'm additionally charging them  
8 with that as far as providing false information.

9           Q. So it wasn't relevant in a case where  
10 you're arresting a man on a federal gun warrant  
11 and you say that there was a gun on the seat when  
12 he got out? You found that him not telling you  
13 who he was at first wasn't important to note?

14          A. I did not notate that in this case.

15          Q. And you wrote your police narrative  
16 about this incident on August 1st, 2018?

17          A. Correct.

18          Q. And you wrote the narrative immediately  
19 after returning to the police station and getting  
20 Mr. Swan booked in and situated in a cell?

21          A. I believe it was around that time. It  
22 was prior to my shift ending at 6:00 a.m.

23          Q. And you wrote the narrative when all the  
24 details of the case were fresh in your mind?

25          A. Correct.

1 Q. And the actual date of your encounter  
2 with Mr. Swan, of course, is August 1st of 2018;  
3 correct?

4 A. Correct.

5 Q. But your police narrative indicates that  
6 the event happened on Wednesday, August the 8th  
7 of 2018; correct?

8 A. That's correct.

9 Q. Why is that date wrong?

10 A. It's just a clerical error on my part.  
11 I typed in 8, and it should have been the 1st.

12 Q. So it's your testimony when you sat down  
13 to write your report on August the 1st of 2018,  
14 you accidentally thought it was Wednesday,  
15 August the 8th instead?

16 A. Correct.

17 Q. You got the date of August 1 correct on  
18 all the booking sheets; is that right?

19 A. Correct.

20 Q. You got the date of August 1st correct  
21 when you hand signed the St. Louis County Police  
22 Department evidence sheet?

23 A. Correct.

24 Q. And all those sheets were signed on  
25 August the 1st?

1           A.    Correct.

2           Q.    So when it came time to write the  
3 narrative, you got the date of the correct  
4 Wednesday of Mr. Swan's arrest wrong?

5           A.    Yes, ma'am.

6           Q.    And you read your police narrative after  
7 you completed it?

8           A.    Yes.

9           Q.    And you didn't catch this error when you  
10 proofread your narrative?

11          A.    I did not.

12          Q.    And the incident report that you  
13 generated for this case was reviewed by several  
14 people in the Florissant Police Department for  
15 accuracy after you wrote it; correct?

16          A.    Correct.

17          Q.    I'd like you to look at Defendant's  
18 Exhibit 0. This is the first page of the  
19 Florissant Police Department incident report that  
20 you wrote in this case; correct?

21          A.    Correct.

22                   (Defendant's Exhibit No. 0,  
23 Florissant Police Department Incident Report, was  
24 identified.)

25          BY MS. BOOTH:

1 Q. And you see that the first page is a  
2 general information page; correct?

3 A. Correct.

4 Q. Then as we proceed through the report we  
5 see there's a page for offenses to list what  
6 offense was committed; correct?

7 A. Correct.

8 Q. We also have a page for persons  
9 involved; is that correct?

10 A. Yes, ma'am.

11 Q. We have a page for vehicles involved?

12 A. Yes, ma'am.

13 Q. And then, of course, then we have your  
14 narrative; correct?

15 A. Correct.

16 Q. And that's where we see on Wednesday,  
17 August the 8th is when you stopped Ms. Thorpe's  
18 car; correct?

19 A. Correct.

20 Q. And we see here below all the people  
21 that reviewed your report once you wrote it;  
22 correct? We have, of course, you. At the time  
23 you were with Patrolman Jonathan Kemp. And we  
24 see the date August 1st, 2018; is that correct?

25 A. Yes, ma'am.

1 Q. Then it's reviewed by a Ms. Peggy Fowler  
2 who's a secretary, and she reviewed that on  
3 August the 17th; correct?

4 A. Correct.

5 Q. We see Sergeant Andre Reece of B platoon  
6 reviewed the matter on August the 19th; correct?

7 A. Correct.

8 Q. And Sergeant Reece, was he a supervisor  
9 of yours at the time?

10 A. Yes. He was my road sergeant.

11 Q. Then we see on August the 19th the  
12 narrative is approved by Lieutenant Rick Pfaff;  
13 correct?

14 A. Yes.

15 Q. Then we see on August 23rd approved by  
16 Lieutenant Rick Pfaff; correct?

17 A. Correct.

18 Q. And none of these people caught that  
19 August 8th date discrepancy: Is that what you're  
20 telling me?

21 A. Yes, ma'am.

22 Q. Officer Kemp -- I apologize, Detective  
23 Kemp, is there an original version of your  
24 narrative somewhere where you note that indicates  
25 the gun was found in the console of the car and



1       that Tiara Thorpe told you that gun was hers?

2             A.    No, ma'am.

3                   MS. BOOTH:   I have nothing further  
4       at this time, Judge.

5                   MR. SORRELL:   Would you turn the  
6       Elmo back on.   Thank you.

7                   REDIRECT EXAMINATION

8       BY MR. SORRELL:

9             Q.    Sir, I believe you've already spoken  
10       about Exhibit O.   Do you see the one I'm  
11       referring to from the Defendant?

12            A.    Yes, sir.

13            Q.    Does that include a copy of the  
14       narrative of your arrest of Mr. Swan that night?

15            A.    Yes, sir.

16            Q.    And in particular does it talk about  
17       your arresting Mr. Swan while he was sitting on a  
18       firearm?

19            A.    Correct.

20            Q.    I believe it says, "It should be noted  
21       that while Swan was exiting the vehicle, I  
22       observed a black-colored handgun on the passenger  
23       seat where he was previously sitting, and after  
24       securing Mr. Swan in the handcuffs, I retrieved  
25       the firearm and properly secured it."   And then

1       you describe the firearm; is that right?

2             A.    Correct.

3             Q.    And then you said you also secured the  
4       firearm in your report that had a bullet in the  
5       chamber and seven rounds of ammunition in the  
6       magazine; is that right?

7             A.    Yes, sir.

8             Q.    And that was written that night?

9             A.    Yes, sir.

10            Q.    Is that the report that's been written  
11       on this case?

12            A.    Yes, sir.

13            Q.    Is there any other report or any other  
14       narrative?

15            A.    No, sir.

16            Q.    And you were asked, I believe, if you  
17       could have called an evidence technician to the  
18       scene to take photographs; is that right?

19            A.    Yes, I remember that.

20            Q.    Now, if you would have called an  
21       evidence technician to the scene after you had  
22       already picked up -- after you already unloaded  
23       it and after you already put it back in your car  
24       is it fair to say that any photographs would have  
25       to have just been staged?

1 A. Yes, sir.

2 Q. So you would have had to have just  
3 simply put it back like you found it in order for  
4 someone to take a picture of it?

5 A. That's correct.

6 Q. And you're not going to leave that  
7 firearm in the car until an evidence technician  
8 would be called out to the scene at 3:30 in the  
9 morning?

10 A. Correct.

11 Q. Okay. Now, you've been asked questions  
12 about the gun part of this case. Now, after  
13 Mr. Swan was arrested, were you requested to do  
14 any other investigation regarding the seizure of  
15 this firearm?

16 A. No, sir.

17 Q. You haven't talked to any other  
18 witnesses?

19 A. Correct.

20 Q. Certainly we didn't contact you to  
21 decide whether to indict the case?

22 A. Correct.

23 Q. And basically your investigation ended  
24 when Mr. Swan left your custody in the Florissant  
25 jail; is that right?

1           A.    Yes, sir.

2           Q.    Is it fair to say that the case, however  
3 it turned out to be, was going to be the  
4 responsibility of some other officer, whether it  
5 be the ATF or some other person?

6           A.    Yes, sir.

7           Q.    Is it fair to say you're not -- you  
8 don't have any more involvement in that part of  
9 the case even though a lot of other things  
10 happened later?

11          A.    Correct.

12          Q.    Okay. Now, you were talking about or  
13 were asked about the first disclosure of  
14 Mr. Swan's statement. The first disclosure of  
15 that statement was actually made the night that  
16 it occurred; is that fair?

17          A.    Yes, sir.

18          Q.    To Mr. Eggers?

19          A.    Yes, sir.

20          Q.    Okay. That included a statement that  
21 Mr. Swan said that he had been shot or basically  
22 affirmed that he had been shot?

23          A.    Yes, sir.

24          Q.    And you just reported that statement as  
25 accurately as you could to Mr. Eggers; is that

1 fair?

2 A. Correct.

3 MR. SORRELL: Nothing further.

4 Thank you.

5 THE COURT: Anything further?

6 MS. BOOTH: No, sir.

7 THE COURT: You may step down.

8 THE WITNESS: Do you want the  
9 firearm? Do you want to take the firearm?

10 MR. SORRELL: Yes.

11 I don't have any other questions.

12 (Witness Excused.)

13 MR. SORRELL: I have one witness. I  
14 don't know if you want to --

15 THE COURT: Yeah. We'll keep going.  
16 Is everybody okay to keep going a little bit?

17 Call your next witness then.

18 MR. SORRELL: We call Brian Eggers,  
19 please.

20 BRIAN EGGERS,  
21 being produced and sworn, testified as follows:

22 THE COURT: You may proceed.

23 MR. SORRELL: Thank you.

24 DIRECT EXAMINATION

25 BY MR. SORRELL:

1 Q. Would you state your name, please.

2 A. Brian Eggers.

3 Q. And what agency do you work for?

4 A. I'm a police officer with the -- for the  
5 City of Cape Girardeau and a task force officer  
6 with the ATF.

7 Q. Okay. Is it fair to say you're a case  
8 agent for this case?

9 A. Yes, sir.

10 Q. And as part of your duties you requested  
11 an ATF trace report for a firearm discovered by  
12 Officer Kemp, or did you receive one?

13 A. I received one, yes, sir.

14 Q. You didn't actually request it, did you?

15 A. Correct.

16 Q. All right. Now, let me show you what  
17 I've marked as Exhibit 17. It's already been  
18 admitted. And that's talking about the ATF trace  
19 report; is that fair?

20 A. Yes, sir.

21 Q. Okay. And it lists Ms. Thorpe as the  
22 purchaser of that firearm from a gun shop in  
23 Missouri, I believe; is that right?

24 A. Yes, sir. Yes, sir.

25 Q. All right. And you had an opportunity

1 to write a report on this case; is that right?

2 A. Yes, I did.

3 Q. And you spoke to Mr. Kemp on the night  
4 of the arrest?

5 A. Yes, sir.

6 Q. That was on August 1st?

7 A. Yes, it was.

8 Q. About what time in the morning did you  
9 speak to Officer Kemp?

10 A. It was early. I would say probably  
11 around 4:00 or 5:00 in the morning.

12 Q. How were you notified that Mr. Swan had  
13 been arrested?

14 A. So once someone who is indicted their  
15 warrant is put into a database called NCIC. And  
16 when that person is arrested, we get a phone call  
17 from Washington, D.C. from the case agent saying,  
18 hey, this individual has been arrested and what  
19 agency arrested them. And then at that point  
20 we're able to reach out to that agency to get the  
21 details of the arrest.

22 Q. And that seemed pretty early in the  
23 morning to contact Mr. Kemp. Did you do that?

24 A. Yes, sir.

25 Q. And Mr. Kemp was still on duty?

1           A.    Yes, he was.

2           Q.    And did Mr. Kemp report a statement that  
3 Mr. Swan made to him?

4           A.    Yes, sir, he did.

5           Q.    You put that in your report?

6           A.    I did.

7           Q.    And that report, of course, is turned  
8 over to the defense like everything else in this  
9 case?

10          A.    Yes, sir.

11          Q.    And did you have a conversation with  
12 Mr. Swan around the end of 2016 or the beginning  
13 of 2017?

14          A.    Yes, sir, I did.

15          Q.    And how did you make contact with  
16 Mr. Swan?

17          A.    I was on patrol with the City of Cape  
18 Girardeau. It was nighttime. I don't remember  
19 exactly what time, but I pulled over a vehicle  
20 and Mr. Swan was driving.

21          Q.    Okay. And did you have a conversation  
22 with Mr. Swan about a gunshot injury?

23          A.    I did.

24          Q.    And can you relate to the jury what that  
25 conversation was about?



1           A. I didn't know who was driving the  
2 vehicle. When I approached, I recognized  
3 Mr. Swan and told him that it was good to see  
4 him. I was glad he was okay.

5           Q. And why did you have a conversation  
6 about him being okay?

7           A. Because I heard that Mr. Swan was shot,  
8 and it was very severe life threatening injuries.

9           Q. Okay. But Mr. Swan had survived that?

10          A. Yes, sir.

11          Q. And did you talk about his gunshot wound  
12 on the scene?

13          A. Not in details, but I told him I had  
14 heard he had been shot. I was happy to see him.  
15 I was glad he was okay.

16          Q. But that was before any of the events  
17 had occurred in this case?

18          A. Absolutely.

19                 MR. SORRELL: May I have just a  
20 moment, Your Honor?

21                 Your Honor, at this time I'm going  
22 to ask about 404(b) evidence, and we have an  
23 instruction that we would propose that you read  
24 for the jury. If I may tender it to the Court.

25                 THE COURT: Yes.

1                   Ladies and gentlemen, I'm going to  
2 read to you a special instruction I'll mark as  
3 Instruction A. You're about to hear evidence  
4 that the Defendant was previously convicted of  
5 the crime of felon in possession of a firearm.  
6 You may consider this evidence only if you  
7 unanimously find it is more likely true than not  
8 true.

9                   You decide that by considering all  
10 of the evidence and deciding what evidence is  
11 more believable. This is a lower standard than  
12 proof beyond a reasonable doubt.

13                  If you find this evidence has been  
14 proved, then you may consider it to help you  
15 decide the issues of motive, opportunity, intent,  
16 preparation, plan, knowledge, absence of mistake  
17 or lack of accident. You should give it the  
18 weight and value you believe it's entitled to  
19 receive.

20                  If you find that this evidence has  
21 not been proved, you must disregard it.  
22 Remember, even if you find that the Defendant may  
23 have committed a similar act in the past, this is  
24 not evidence that he committed such an act in  
25 this case.

1                   You may not convict a person simply  
2                   because you believe he may have committed similar  
3                   acts in the past. The Defendant is on trial only  
4                   for the crimes charged, and you may consider the  
5                   evidence of prior acts only on the issues stated  
6                   above.

7                   MR. SORRELL: Thank you.

8                   BY MR. SORRELL:

9                   Q. Officer, would you take a look at what  
10                  I've marked as Exhibit 12. Can you see that?

11                  A. Yes, sir.

12                  Q. And can you tell the jury what that is?

13                  A. That is a federal indictment for  
14                  Mr. Barrett Swan.

15                               (Government's Exhibit No. 12,  
16                  Indictment, was identified.)

17                  BY MR. SORRELL:

18                  Q. Okay. And do you know if this Barrett  
19                  Swan listed on Exhibit 12 has any relationship to  
20                  the Defendant in this case?

21                  A. Yes, sir. It's the same person.

22                  Q. Okay. And would you then take a look at  
23                  the back of this exhibit, second page, is that  
24                  the judgment for the same case?

25                  A. Yes, sir, it is.

1 Q. Just basically shows the conviction of  
2 Mr. Swan; is that right?

3 A. That's correct.

4 Q. Now, you wrote a report in this case; is  
5 that fair?

6 A. Yes, sir.

7 Q. Did you -- when you wrote that report,  
8 what date did you put the event occurred on?

9 A. I put that it occurred on August 8th.

10 Q. And you actually talked to Mr. Kemp on  
11 August 1st?

12 A. Yes, sir, that's correct.

13 Q. So is that just an error by reading from  
14 Mr. Kemp's report?

15 A. That's exactly right.

16 Q. And you just carried it forward on your  
17 report?

18 A. I'm sorry?

19 Q. And it just carried forward on your  
20 report?

21 A. Yes, sir.

22 Q. And do you know the two firearms the  
23 testimony so far has been they were both found on  
24 the left side of Mr. Swan; is that right?

25 A. That's correct.

1 Q. And do you know if Mr. Swan is left  
2 handed?

3 A. Mr. Swan is left handed.

4 Q. And do you see that person in court or  
5 do you know Mr. Swan?

6 A. Yes, sir.

7 Q. Would you point him out for the Court,  
8 please.

9 A. The gentleman at the defense table in  
10 the blue shirt.

11 MR. SORRELL: Would the record  
12 reflect the witness has identified Mr. Swan?

13 THE COURT: The record will so  
14 reflect.

15 BY MR. SORRELL:

16 Q. And that's the Mr. Swan that the arrest  
17 warrant was pending for on the night of  
18 August 1st; is that correct?

19 A. Yes, sir.

20 MR. SORRELL: Nothing further.  
21 Thank you.

22 THE COURT: Ms. Booth.

23 MS. BOOTH: I'm sorry. I didn't  
24 know Mr. Sorrell was finished.

25 CROSS-EXAMINATION

1 BY MS. BOOTH:

2 Q. Agent Eggers, you had an opportunity to  
3 speak with Jonathan Kemp -- Detective Jonathan  
4 Kemp on August 1st of 2018; correct?

5 A. Yes, ma'am.

6 Q. He called you when he learned there was  
7 a federal arrest warrant for Mr. Swan; correct?

8 A. I don't remember if I called him or if  
9 he called me, but when I was notified by the  
10 agency in Washington, D.C. I don't remember if I  
11 called the Florissant Police Department or if he  
12 called me right away.

13 Q. Okay. So just so our jurors understand  
14 that when that federal arrest warrant is made,  
15 you're alerted; correct?

16 A. Absolutely.

17 Q. Because your name would have been on  
18 that arrest warrant information to contact you --

19 A. Yes, ma'am.

20 Q. -- correct?

21 And you had several conversations with  
22 Detective Kemp about the facts of the case;  
23 correct?

24 A. Yes, sir.

25 Q. And when you spoke with him, it was

1 clear that he would just provide you all  
2 important information he learned about the case;  
3 correct?

4 A. That's what I understood, yes, ma'am.

5 Q. He never told you that Tiara Thorpe told  
6 him that that firearm was hers at the scene;  
7 correct?

8 A. No, ma'am.

9 Q. And that statement that Detective Kemp  
10 says that Mr. Swan made to him that's included in  
11 your report, did you ever tell Detective Kemp  
12 don't worry about writing a supplemental, no need  
13 to put that in your report?

14 A. No.

15 Q. And at some point did you ask Officer  
16 Kemp to write a supplemental report to give the  
17 details of how that statement came to be?

18 A. I did.

19 Q. And did he write that supplemental  
20 report?

21 A. No, ma'am.

22 MS. BOOTH: I have nothing further,  
23 Your Honor.

24 MR. SORRELL: No, Your Honor.  
25 Nothing further.

1 THE COURT: You may step down.

2 (Witness excused.)

3 MR. SORRELL: Your Honor, the  
4 Government rests.

5 (Government Rests.)

6 THE COURT: All right. Ladies and  
7 gentlemen, we'll recess for the day and finish  
8 the trial tomorrow.

9 And you're going to go home, and  
10 your spouses, your family, your friends are all  
11 going to want to know what's going on. Just tell  
12 them you're under threat of contempt of court to  
13 talk about the case in any respect, and you know  
14 the reasons why as I've explained to you at  
15 length.

16 So please honor that oath that  
17 you've taken. Don't discuss the case among  
18 yourselves or with others or permit anyone to  
19 discuss it in your presence. Do not form or  
20 express an opinion about the case until it's  
21 given to you decide.

22 We'll reconvene at 9 o'clock  
23 tomorrow. Should they go to the jury assembly  
24 room?

25 THE CLERK: Yes.



1 THE COURT: And then you'll be  
2 brought up here. But, again, report at 9:00 a.m.  
3 to the jury assembly room.

4 Thank you for your patience, and  
5 we'll be in recess for the day.

6 Mr. Anderson, if you'd stay in the  
7 courtroom for a few minutes.

8 So you're excused at this time.

9 (Proceedings resumed in open court  
10 outside the presence of the jury except Juror  
11 Number 7.)

12 THE COURT: Mr. Anderson, I'm going  
13 to ask you a few questions. I'm concerned about  
14 the matter of when you had to go out to the car.  
15 The court security officers had observed you  
16 leaving and going out to the car with two people,  
17 a woman and a child, who were sitting with the  
18 members of the friends and family of the  
19 Defendant.

20 Do you know any of these people?

21 JUROR NUMBER 7 ANDERSON: No. I  
22 know them. That's my family.

23 THE COURT: Okay. They were in the  
24 courtroom then during the trial?

25 JUROR NUMBER 7 ANDERSON: Yeah.

1 THE COURT: And who is that, your --  
2 JUROR NUMBER 7 ANDERSON: My  
3 daughter and my fiancée.

4 THE COURT: Your daughter and your  
5 fiancée. Okay. And they went out to the car  
6 with you then to get medication?

7 JUROR NUMBER 7 ANDERSON: Yeah.  
8 They brought me. She drove me here.

9 THE COURT: Okay. All right. That  
10 kind of alleviates my concern about the matter.

11 Again, it's just absolutely critical  
12 that you don't have any interaction with any of  
13 the people involved in the trial, including the  
14 friends and family.

15 JUROR NUMBER 7 ANDERSON: All right.  
16 Yeah. They don't know me.

17 THE COURT: Okay. That's fine. All  
18 right. We'll see you tomorrow at 9 o'clock then.

19 (Juror Number 7 left.)

20 (Proceedings resumed in open court  
21 outside the presence of the jury.)

22 THE COURT: Any matters you want to  
23 take up before recessing for the day?

24 MS. WOODRUFF: No.

25 MR. SORRELL: No, sir.

1 MR. TILSEN: No.

2 MS. BOOTH: No, sir.

3 THE COURT: All right. We'll go off  
4 the record.

5 (A discussion was held off the  
6 record.)

7 (Proceedings resumed in open court  
8 outside the presence of the jury.)

9 THE COURT: Let me go back on the  
10 record with everybody. When the CSO interrogated  
11 or asked the two people who left with  
12 Mr. Anderson, he asked are you here with the  
13 Defendant's family? And they said, Yes.

14 And so I'm going to inquire further.  
15 Maybe it was a miscommunication, but in the  
16 morning I'll inquire one more time about that.

17 MR. SORRELL: Okay.

18 THE COURT: But it's apparently not  
19 because --

20 MR. TILSEN: I think you should  
21 leave him alone, Your Honor, for the record.  
22 Well, you've asked him, and he's answered the  
23 Court. Why don't you -- who's the CSO who spoke  
24 to these people?

25 THE COURT: That doesn't matter.

1       Anyway, I may or may not bring it up again in the  
2       morning, but it was conflicting.

3               MR. TILSEN: I mean, we've already  
4       singled out one of the several jurors that was  
5       sleeping, you know, and I have -- there was a  
6       reason for it, but still that's extra pressure on  
7       him when I don't think it's fair.

8               THE COURT: Well, do you want to  
9       move for a mistrial?

10              MR. TILSEN: No.

11              THE COURT: Or what do you want to  
12       do?

13              MR. TILSEN: I think you've  
14       adequately asked this juror whether he had any  
15       connection with the Defendant or the Defendant's  
16       family.

17              THE COURT: Well, at the time that I  
18       asked I didn't have all of the information.  
19       So -- okay?

20              We'll be recessed for the evening  
21       then.

22              (The hour of adjournment having  
23       arrived, the jury, being duly admonished by the  
24       Court, by agreement, is allowed to separate for  
25       the evening, under the usual instructions of the

1 Court, until Tuesday, July 9, 2019, at 9:00 a.m.)  
2 (PROCEEDINGS CONCLUDED AT 5:20 P.M.)  
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C E R T I F I C A T E

I, Alison M. Garagnani, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 294 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated Cape Girardeau, Missouri, this 13th day of January, 2020.

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/s/Alison M. Garagnani  
Alison M. Garagnani, CCR, CSR, RMR, CRR  
Official Court Reporter